

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

B

74-1511

United States Court of Appeals

For the Second Circuit.

SECURITIES INVESTOR PROTECTION CORPORATION,
Plaintiff-Appellant,

against

CHARISMA SECURITIES CORPORATION,
Defendant.

EDWIN L. GASPERINI,
Petitioner-Appellant,

GASPERINI & SAVAGE,
Petitioner-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

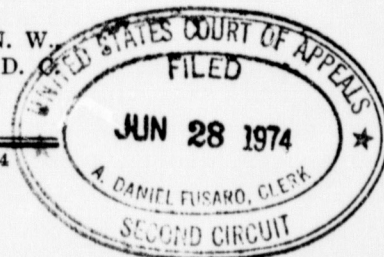
EDWIN L. GASPERINI,
Trustee of Charisma Securities, Appellant,
10 East 53rd Street,
New York, N. Y. 10022

GASPERINI & SAVAGE,
Appellants Pro Se,
10 East 53rd Street,
New York, N. Y. 10022

THEODORE H. FOCHT,
*General Counsel, Securities Investor Protection
Corporation, Appellant,*
Suite 800, Farragut Building,
900 Seventeenth Street, N. W.
Washington, D. C.

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1974

(3919)



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1a

UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

-----X
SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff,

against

CHARISMA SECURITIES CORPORATION,

Defendant.
-----X

RELEVANT DOCKET ENTRIES.

March 8, 1972 - Filed Complaint and Application, issued Summons.

March 8, 1972 - Filed Affidavit by S.E.C. investigator Sheldon G. Kanoff, in support of the Application of the SEC. Inv. Protection Corp. seeking the appointment of a Trustee etc. and freeze the affidavits of the defendant.

March 9, 1972 - Filed Order appointing Edwin L. Gasperini, Esq. of ~~Gasperini, Koch & Savage~~, 277 Park Avenue, New York, New York 10022 as Trustee for the liquidation of the business of Charisma Securities Corp, etc.

March 17, 1972 - Filed Order. Ordered Notice of Hearing re: objections fixed for 5/5/72 in room 610 at 2:15 p.m.:

May 5, 1972 - Filed Memo. End. on motion paper dated 3/17/72. There being no opposition, the trustee found to be qualified and disinterested and his appointment is confirmed as trustee. So Ordered Pollack J.

November 2, 1973 - Filed Trustee's final report and account.

November 2, 1973 - Filed application by Trustee for a final allowance of compensation for services rendered as trustee.

November 2, 1973 - Filed application by Trustee's Counsel for a final allowance of compensation for services rendered.

RELEVANT DOCKET ENTRIES

- November 2, 1973 - Filed Order that on 12-7-73 a final meeting of creditors will be held.
- January 9, 1974 - Filed Trustee's application to amend the final report and accounting
- January 9, 1974 - Filed Trustee's application to modify request for final allowance of compensation for services as counsel.
- January 9, 1974 - Filed Trustee's application to modify request for final allowance of compensation for services as trustee.
- January 9, 1974 - Filed Order that the final report and accounting of the Trustee, E. Gasperini, is deemed amended to include the matters set forth in his application to amend dated 12-6-73, etc. Pollack, J.
- February 25, 1974 - Filed plaintiff's affidavit in support of application of Trustee and Counsel.
- February 25, 1974 - Filed letter from T. H. Focht to Judge Pollack dated 1/17/74 re: Charisma Securities Corp.
- February 26, 1974 - Filed Opinion # 40394 . . . Accordingly, under all the facts and circumstances presented herein, it is the judgment of this court that the fair and reasonable compensation for the Trustee to be paid herein by SIPC is \$3,500. and for his law firm, \$6,500. Pollack, J. mn
- March 5, 1974 - Filed Trustee's Final Statement.
- March 25, 1974 - Notice of appeal of Trustee and his Counsel.
- March 27, 1974 - Notice of appeal of Securities Investor Protection Corporation.

NOTICE OF APPEAL OF THE TRUSTEE AND COUNSEL,
GASPERINI & SAVAGE.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

-----X

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff,

against

CHARISMA SECURITIES CORPORATION,

Defendant.

-----X

Notice is hereby given that the Trustee of Charisma Securities Corporation, Edwin L. Gasperini, and his Counsel, Gasperini & Savage, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order of Hon. Milton Pollack entered in this

NOTICE OF APPEAL OF THE TRUSTEE AND COUNSEL,
GASPERINI & SAVAGE

action on the 28th day of February, 1974 which reduced
the fee application of the said Trustee from \$5,000
to \$3,500 and the fee application of Counsel to the
Trustee from \$25,000 to \$6,500.

Dated: New York, N.Y.,
March 25, 1974.

EDWIN L. GASPERINI, Trustee of
Charisma Securities

GASPERINI & SAVAGE,
By: s/ Patrick W. McGinley
PATRICK W. MCGINLEY, a
Member of the Firm

TO: Clerk
United States District Court
Southern District of New York

Theodore H. Focht, Esq.,
General Counsel
Securities Investor Protection Corporation
Suite 800, Parregut Building
900 Seventeenth Street, N.W.
Washington, D.C. 20006

NOTICE OF APPEAL OF SECURITIES INVESTOR
PROTECTION CORPORATION.

UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

Notice is hereby given that Securities Investor Protection Corporation, petitioner above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order of the Hon. Milton Pollack entered on February 26, 1974, which order awarded allowances of final compensation to Edwin L. Gasperini, Trustee, in the sum of \$3,500, and to Gasperini & Savage, Trustee's Counsel, in the sum of \$6,500, for their services in the liquidation of Charisma Securities Corporation.

Dated: Washington, D.C.
March 27, 1974.

Securities Investor Protection Corp.

THEODORE H. FOCHT,
General Counsel
Securities Investor Protection Corporation, Petitioner
900 Seventeenth Street, Suite 800
Washington, D.C. 20006

ORDER ON APPLICATION FOR FEES APPEALED FROM.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

SAME TITLE

APPEARANCES:

THEODORE H. FOCHT, Esq.,
MICHAEL E. DON, Esq.,
Attorneys for Plaintiff,
485 L'Enfant Plaza, S.W.,
Washington, D.C. 20024

EDWIN L. GASPERINI, ESQ.,
Trustee, PRO SE

GASPERINI, KOCH & SAVAGE,
Attorneys for Trustee
277 Park Avenue,
New York, N.Y. 10017

MILTON POLLACK, District Judge.

In this liquidation under the Securities Investors Protection Act (hereinafter "SIPA"), 15 U.S.C. §§78aa-111, the Trustee and his counsel (the law firm which is headed by the Trustee) have applied to this Court for a final fee allowance. The amount sought totals some \$30,000 -- \$5,000 for the Trustee, and \$25,000 for his firm.¹ That figure purports to represent compensation

1. The initial "final fee" application asked for a higher figure -- totalling somewhat over \$38,000 -- but that figure was voluntarily reduced, without suggestion of the Court either as to the propriety of such a reduction or of the amount requested.

ORDER ON APPLICATION FOR FEES APPEALED FROM

for 77.7 hours of the Trustee's time and 476.4 hours of counsel's time, asserted by the applicants to have been necessarily spent on this liquidation. Midway in the proceedings, the Trustee and his law firm applied for an *interim* fee allowance of \$8,075; this was denied as premature "without prejudice to the right of the applicants to present requests for allowances of compensation upon the practical completion of the administration of the estate involved." *Securities Investors Protection Corp.* (hereinafter "SIPC") *v.* *Charisma Securities Corp.*, 352 F. Supp. 302 (S.D.N.Y. 1972).

The facts relating to this liquidation, its scope, relatively narrow problems, absence of assets, and rather prosaic character, have already been set forth in detail in that prior opinion and need no repetition. Thereafter, on November 2, 1973, the Trustee filed his "Final Report and Account" which was approved by the Court and an order was entered terminating this liquidation except for the allowance of compensation to the applicants; this was reversed for separate order herein.

ORDER ON APPLICATION FOR FEES APPEALED FROM

The background of the administration of this liquidation is particularly significant in respect of the instant applications. Shortly after his appointment, the Trustee hired accountants highly experienced in financial and securities matters. Those accountants undertook and performed most of the significant tasks herein. They collected such records of the company as were to be had; they examined those records carefully and prepared work sheets; they identified and communicated with all potential claimants; these boiled down to a total of only 37 customers; they ascertained that only 24 customers presented allowable claims and that each had only a comparatively small claim; and they catalogued each claim presented and submitted a recommended disposition to the Trustee.² Scrutiny of the claims file shows that the input thereon of the Trustee and his counsel both before and after the work of the accountants was largely limited to the preparation of a single "form" letter to be mailed to each claimant, as well as a short reply, prepared in terms

2. In order to appreciate the actual situation and any problems presented thereby at first hand, the Court procured the entire claims file which consists of but one single red folder of papers.

ORDER ON APPLICATION FOR FEES APPEALED FROM

following the recommendation of the accountants on the validity and extent of the claim. In virtually every instance, all substantive work -- including the subsequent contacts and negotiations with the claimants, and the fielding of controversies presented therein -- was performed by the accountants. The accountants' determination of the validity and the allowable amount of the claims presented was covered in three reports to the Trustee which, without exception, became the basis of the rejection of a claim or the payment of the claim by SIPC on request of the Trustee. For their professional services, the accountants were paid by SIPC on request of the Trustee the sum of \$13,773.75.³

The total sums paid out to claimants in this liquidation was approximately \$43,000. Together with the fees paid to the accountants, the applications before the Court would result in total fees for administering those claims of \$43,773.75 (plus stenographic

3. The statute permits the Trustee to select the accountants, to agree on their compensation, and to secure payment for them from SIPC without any notice to, review by, or approval of the federal Court involved in the matter. 15 U.S.C. §78fff(b)(1). In this regard the procedure is unlike that under Chapter X of the Bankruptcy Law, the avowed lodestar of SIPC liquidations.

ORDER ON APPLICATION FOR FEES APPEALED FROM

charges which SIPC has apparently paid to the Trustee or his law firm). The total would represent a cost of about \$1,000 for every \$1,000 of net equities returned to Charisma's customers.

A fee allowance, whether in Chapter X proceedings or satellites thereof must bear a sensible and practical relation to the size of the estate, the number of claims involved and the actual services reasonably and necessarily required in the administration. The value of the estate is a highly significant factor to be appreciated. *See* 352 F. Supp. at 307. *See also SEC v. Quodar Equities, Ltd.*, ___ F. Supp. ___ (E.D.N.Y. 1973) ("The Trustee's fee must be related to the value of the estate.")

To be sure, the Trustee and his counsel were additionally faced with the somewhat unenviable task of uncovering Charisma's assets -- which here totalled less than \$15 -- and reconstructing the events leading to the corporation's downfall. Furthermore, at least two of the claimants presented some complexities that had to be resolved apart from the benefit of the accountants' recommendations. Nonetheless, the responsibilities undertaken, the routine and simple

ORDER ON APPLICATION FOR FEES APPEALED FROM

tasks performed, and the work exhibited herein simply fail to justify the need for the claimed services or the fees requested.

Apart from the foregoing, both Trustee and his counsel have repeated the mistake of their earlier interim fee application in attempting to bill their time at the "going rates" for law firms in New York.⁴ As noted in that opinion, the "going rate" suggested here is not necessarily the standard for determining allowances in simple, routine liquidations which involve little more than accounting ascertainment and payment of net equities of stock brokerage customers. *See also Surface Transit, Inc. v. Saxe, Bacon & O'Shea*, 266 F. 2d 862 (2d Cir. 1960).

As indicated previously, the SIPA requires that liquidations be conducted in accordance with, and as though they were proceeding under, Chapter X of the Bankruptcy Act. 15 U.S.C. §78fff(c)(1). *See also SEC v. Packer, Wilbur & Co., Inc.*, 362 F. Supp. 510

4. That "rate" is said to be between \$90 - \$100 per hour for partner's time, and \$45 per hour for associate's time. Unquestionably, the "rate" is higher for particular types of services as well as lower for others.

ORDER ON APPLICATION FOR FEES APPEALED FROM

(S.D. N.Y. 1973). That area of law has been ploughed extensively for over 35 years, is well known, and easily navigated by practitioners in the field. That Act provides that "the Judge may allow . . . reasonable compensation for services rendered . . . in a proceeding under this chapter . . . by the trustee and . . . [his] attorneys . . ." 11 U.S.C. §641. While it is true that the "economical spirit" of the Bankruptcy Act does not limit the allowance of fees in a SIPC liquidation, neither should this Court permit such a liquidation to be "turned into an opportunity for vicarious generosity at the expense of a stricken entity." 352 F. Supp. at 306; *see also In re Polycast Corp.*, 289 F. Supp. 712 (D. Conn. 1968). In short, this Court's function is to allow a "reasonable" compensation for such expert legal and administrative work as is reasonably and sensibly required by the circumstances presented, and in fixing the proper fee to "strike a reasonable mean between the two extremes of free choice and forced economy." 352 F. Supp. at 307; *see also In re Mabson Lumber Co.*, 394 F.2d 23 (2d Cir. 1968); *In re Westec Corp.*, 313 F. Supp. 1296 (S.D. Texas 1970); *In re Dole*, 244 F. Supp. 751 (D. Me 1965).

ORDER ON APPLICATION FOR FEES APPEALED FROM

In this Court's earlier opinion the relevant standards were expressed as follows:

The standards for fee allowances in a re-organization proceeding call for the ascertainment of the level of services required, consideration of the burden that an estate can safely bear, the value of required services and the overall relationship of the compensation to the size of the estate being administered under a concept of reasonable economy of administration. [citation omitted].

. . . [T]he Court should take notice of whether professionals or para-professionals may be utilized for the services needed, whether the bulk of the work will require the services of accountants rather than lawyers, and whether the work required is legal or clerical in nature [citations omitted]. 352 F. Supp. at 307.

In addition to the foregoing, the Court must consider the time and labor required, the novelty of the problems presented, and the difficulty of the questions involved.

ORDER ON APPLICATION FOR FEES APPEALED FROM

See A.B.A. Code of Professional Responsibility §DR 2-106. Here, the time spent on marshalling the assets and determining the liabilities of Charisma, as well as processing the small number of claims, was properly -- and, apparently, also actually -- a pure accounting function. Accordingly, since the accountants have already been appropriately compensated for their work in that regard, further payment of fees for legal and administrative services superimposed thereon at top legal rates to the Trustee or his law firm, would simply -- and wrongfully -- duplicate to a material degree the proper fees already paid. Additionally, many of the "administrative matters" cited by the applicants herein realistically involved only routine, non-expert bookkeeping and hence must be appropriately discounted, if not altogether disregarded. *See generally In re Mabson Lumber Co., supra.; In re Hardwick & Magee Co., 355 F. Supp. 58 (E.D. Pa. 1973); see also In re Roustabout Co., 386 F. 2d 354 (3d Cir. 1967).* The applications call attention to many hours of

ORDER ON APPLICATION FOR FEES APPEALED FROM

extensive "research" into the "background of the securities industry."⁵ This area of time spent must be likewise discounted for an allowance in a simple case of this sort, for it is neither the function nor the purpose of the SIPA to compensate lawyers altogether unfamiliar with this field or the securities business for their self-education therein. Under the law, the Court has no function in the selection of a Trustee or his counsel; it merely orders their appointment on the recommendation of SIPC and the wisdom thereof is not now pertinent. However, the Court is entitled to presume that SIPC appoints and recommends attorneys selected for their acquaintance with, if not expertise in, this area (*cf. SIPC v. Oxford Securities*, 354 F. Supp. 301 (S.D.N.Y. 1972)); it would, therefore, surely be inappropriate to compensate selectees for acquiring a basic background knowledge which undoubtedly was presumed in making their initial selection. In

5. The Trustee asks specifically to be compensated for time "acquaint[ing] myself with the technicalities of the securities industry" (Trustee's Application, page 4); his counsel similarly cites time spent in exploring "the intricacies of the brokerage industry" (Counsel's Application, page 20).

ORDER ON APPLICATION FOR FEES APPEALED FROM

that regard, it should also be noted that both the Trustee and his counsel have even applied here for fees representing work done for about a month prior to their appointment by SIPC and the entry of an order of this Court designating them herein. How they learned in advance of their appointment that they would be named in an order of the Court in a liquidation not yet ordered is unclear. Needless to say, it would be improper to allow compensation for work done on a liquidation that had not yet been ordered to be commenced, or before the applicants were employed and authorized by the Court to act. See 6 *Remington on Bankruptcy* (5th Ed. 1952) §2646; *In re Orbit Liquor Store*, 439 F. 2d 1351 (5th Cir. 1971). In short, the applications submitted herein do no more than ritualistically repeat rote allegations of service generalities -- precisely the sort of application that this Court's prior opinion explicitly cautioned against. See 352 F. Supp. at 308.

The only work herein that can properly be denominated as necessary and legal in character relates to three contested claims and one potential litigation in which the Trustee brought a Rule 10b-5 suit against

ORDER ON APPLICATION FOR FEES APPEALED FROM

a former principal of Charisma.⁶ That litigation, *Charisma v. Adelman*, 72 Civ. 4840, was neither authorized by the Court before it was filed nor allowed to proceed once this Court ascertained by inquiry of the Trustee that there was at best a speculative, indeed a gossamer, basis for the alleged claim, coupled with dim and perhaps no probability of a collection for the estate, even if brought to judgment. The submission of seven orders of a kind routine to proceedings under Chapter X administration, and five status reports to this Court likewise involved the services of counsel. However, as noted above, the three claims required a minimum of preparation and research; none involved more than

6. The contested claims themselves were relatively straightforward. The first involved the claim of various members of the Fischer family, and a related trust, which owned 24- $\frac{1}{4}$ % of the stock of Charisma. After a short hearing before the Court, the claims were disallowed insofar as payment from SIPC was requested, and relegated to the category of general creditors' claims. The second claim involved issues arising from certain purchases of stock by M. Jim Karp, an individual who, it was alleged, was connected with Charisma. After a very brief hearing -- held on the same day as the hearing involving the Fischer claim -- the Court determined that Karp had a claim for \$8,500. The third claim was by Shirley Bennett, who argued that she had purchased certain shares from Charisma through the aforementioned M. Jim Karp; apparently, trustee's counsel was forced to undertake some independent investigation to determine the validity of that claim, wholly apart from an examination of the books and records of Charisma.

ORDER ON APPLICATION FOR FEES APPEALED FROM

minimal court appearances. Similarly, the "orders" prepared and submitted to the Court were the usual short, standard forms, while the "Reports" simply summarized the work of others.

In sum, even the more "complicated" aspects of the Charisma liquidation were, in reality, fairly simple and straightforward, and in no way justify substantial fees based on requirements for experts or specialized service. That SIPC has gone on record as "support[ing] in full the respective applications of the Trustee and his Counsel" adds no weight in the present circumstances; indeed, it is beyond comprehension how the statutory guardians of the contributions of the financial community, formed to aid the customers of stricken brokerage firms, can have allowed these applications to be blindly rubberstamped, without examination of the claims or any close scrutiny or appreciation of the realities involved. An opportunity to explain resulted in a letter to the Court which is being filed herewith that wholly fails to indicate that SIPC even saw the claims, the files, or anything to do with them, except the Trustee's reports and perhaps some oral explanations thereof.

ORDER ON APPLICATION FOR FEES APPEALED FROM

SIPC, the Trustee, and his counsel are all entrusted with the highest standards of diligence and responsibility. The brokerage community, which finances the fund, is entitled to no less than this in the treatment of its contributions. The liquidation before this Court is, by any and every standard, a small one involving small uncomplicated claims. If the fees requested herein were to be allowed in full, the result would signal a radical departure from the words and intent of the Act created to protect customers' net equities in the hands of enterprises that have foundered. This case represents practically nothing beyond ascertaining and paying the customers' net equities to them. Other aspects of other liquidations of an investigatory character or the liquidation, pursuit and marshalling of assets formed no significant part of this case. This Court, therefore, simply cannot and will not blindly acquiesce -- as SIPC apparently has done -- to assessing the fees requested against the trust fund administered by SIPC.

This case points up the probable need for legislative readjustment of the SIPA and the functions of its administrators. For one thing, all appointments of

ORDER ON APPLICATION FOR FEES APPEALED FROM

servicing personnel should be subject to court control, and *all* expenses should be submitted to the Court for approval so that a balanced view of the totality thereof can be maintained. This is the Chapter X requirement which has been relinquished in part under the SIPA without apparent reason, and should therefore be introduced into the liquidation procedure. Moreover, SIPC maintains a legal staff; serious thought should also be given to whether SIPC should also maintain an adequate separate central accounting staff and a platoon of back office brokerage personnel and utilize such staffs to protect and maintain customer accounts during the pendency of liquidation procedures, while conducting liquidations where, as here, only supplemental outside assistance is needed.⁷

7. In addition, revision of the SIPA should be considered to more fully apprise members of the public that general contract and fraud claims as well as claims for market losses against brokerage houses are not included in the insurance umbrella afforded by SIPC, and that only net equities of the customers are recoverable up to the ceiling limits given in the statute. Public unawareness in this area has been clearly portrayed to this Court in this but more particularly another pending liquidation. SIPC should take immediate steps to rectify this unfortunate situation by a more substantial and explicit method of public notice and notice to claimants at the very inception of a liquidation.

ORDER ON APPLICATION FOR FEES APPEALED FROM

Adequate supervision and prompt programming on the part of SIPC could perhaps have obviated the unnecessary expenditure of services which the lawyers may have provided in this case in areas where time and effort were not required. For this reason a balance must be struck so that the entire burden is not visited on the lawyers and a more generous fee will be allowed than the amount that realistically should have been incurred. SIPC should thus, in effect, pay more under the circumstances.

To be sure, as noted recently by one District Judge, "[t]here are perhaps few judicial determinations more sophisticated or indeed more difficult than the determination of a fee award." *In re Hardwick & Magee Co.*, 355 F. Supp. 58, 69 (E.D. Pa. 1973). This is particularly true when, as here, potentially high-powered facilities have been devoted to routine, almost mechanical, administrative tasks. It is clear that the extent of the fees here requested can hardly be justified on the facts or sanctioned by a Court for a case like this.

ORDER ON APPLICATION FOR FEES APPEALED FROM

Accordingly, under all the facts and circumstances presented herein, it is the judgment of this Court that the fair and reasonable compensation for the Trustee to be paid herein by SIPC is \$3,500, and for his law firm, \$6,500.

SO ORDERED.

February 26, 1974

MILTON POLLACK,
U.S. District Judge.

COMPLAINT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

Plaintiff Securities Investor Protection Corporation
("SIPC") for its complaint alleges that:

1. Plaintiff SIPC is a nonprofit corporation created by the Securities Investor Protection Act of 1970 ("1970 Act"), 15 U.S.C. § 78aaa.
2. Pursuant to Section 5(a)(2) of the Investor Protection Act, 15 U.S.C. § 78eee(a)(2), plaintiff SIPC applies to this Court for a decree adjudicating that customers of defendant Charisma Securities Corporation, a member of SIPC, are in need of the protection provided by said Act.
3. This Court has jurisdiction of this complaint and application under Section 5(a)(2) of the 1970 Act, 15 U.S.C. § 78eee(a)(2).
4. SIPC has determined that defendant Charisma Securities Corporation is in danger of failing to meet its obligations to customers, and based on the allegations

COMPLAINT

in the Affidavit of Sheldon G. Kanoff filed herewith, there exists one or more of the conditions specified in Section 5(b)(1)(A) of the 1970 Act, 15 U.S.C. § 78eee(b)(1)(A), in that, among other things, said defendant is not in compliance with applicable requirements under the Securities Exchange Act of 1934 and the rules of the Commission (namely 17 C.F.R. 240.15c3-1) with respect to financial responsibility.

5. SIPC has made no prior application for the relief to be requested herein to any court or judge thereof.

WHEREFORE, Plaintiff respectfully prays and demands:

I. A. That the Court, in accordance with the provisions of Section 5(b)(1) of the 1970 Act, 15 U.S.C. § 78eee(b)(1), enter a decree adjudicating that the customers of Charisma Securities Corporation are in need of protection under said Act.

B. That upon an adjudication that the customers of Charisma Securities Corporation are in need of protection under the 1970 Act, this Court, pursuant to Section 5(b)(3) of the 1970 Act,

COMPLAINT

appoint Edwin I. Gasperini, Esq., Gasperini, Koch and Savage, 277 Park Avenue, New York, New York 10017, as Trustee, and Gasperini, Koch and Savage, 277 Park Avenue, New York, New York 10017, as Attorneys for the Trustee. SIPC has been advised that the Trustee, and his firm as Counsel to the Trustee, will make a joint fee request and that there will be participation within the firm in any fee granted. SIPC considers this appropriate.

C. That the Court order, pursuant to Section 5(b)(2) of the 1970 Act, 15 U.S.C. § 78eee(b)(2), that during the period of trusteeship all creditors of the defendant Charisma Securities Corporation and all other persons, firms, and other corporations, including sheriffs, marshals and other officers and their deputies and their respective attorneys, servants, agents and employees of all such persons be stayed, enjoined and restrained from commencing, prosecuting, continuing or enforcing any suit or action or proceeding of any kind other than any proceeding to be brought by the United States

COMPLAINT

Securities and Exchange Commission against the defendant Charisma Securities Corporation or the said Trustee, without first obtaining an order of this Court.

D. That the Court order that, pursuant to Section 6(c)(1) of the 1970 Act, 15 U.S.C. § 78fff(c)(1), all creditors of the defendant Charisma Securities Corporation and all other persons be stayed, enjoined, and restrained for a period of fourteen (14) days, or such other time as may be subsequently ordered by this Court, from enforcing valid, nonpreferential liens or pledges against the property of the defendant, Charisma Securities Corporation, and from exercising the set off of debts provided for in section 68 of the Bankruptcy Act (11 U.S.C. 108).

COMPLAINT

II. Such other further relief as this Court
may deem necessary and proper.

Respectfully submitted,

s/ Theodore H. Focht,
General Counsel.

s/ Michael E. Don,
Attorney.

Attorneys for
Securities Investor Protection Corp.
485 L'Enfant Plaza, S.W.
Washington, D.C. 20024
Telephone No.: (202) 484-5400

Dated: March 8, 1972.

ORDER APPOINTING TRUSTEE.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

On the Application of the Securities Investor
Protection Corporation ("SIPC"), it is hereby:

I. ORDERED, ADJUDGED AND DECREED that the
customers of Charisma Securities Corporation are in
need of the protection afforded by the Securities
Investor Protection Act of 1970 ("1970").

II. ORDERED that Edwin L. Gasperini, Esq.,
Gasperini, Koch & Savage, 277 Park Avenue, New York,
New York, 10017, being a person specified by SIPC
pursuant to Section 5(b)(3) of the 1970 Act, 15
U.S.C. § 78eee(b)(3), is hereby appointed as Trustee
for the liquidation of the business of Charisma
Securities Corporation with all of the duties and
powers of a Trustee as prescribed in the 1970 Act,
and Messrs. Gasperini, Koch & Savage, 277 Park Avenue,
New York, New York, 10017, being persons specified by
SIPC pursuant to Section 5(b)(3) of the 1970 Act,

ORDER APPOINTING TRUSTEE

15 U.S.C. § 78eee(b)(3), are hereby appointed as Attorneys for said Trustee. Said Trustee shall file a fidelity bond satisfactory to the Court in the amount of Ten Thousand dollars (\$10,000).

III. ORDERED, pursuant to Section 5(b)(2) of the 1970 Act, 15 U.S.C. § 78eee(b)(2), that during the period of this trusteeship, all creditors of the defendant Charisma Securities Corporation and all other persons, firms, and other corporations, including sheriffs, marshals and other officers and their deputies and the respective attorneys, servants, agents and employees of all such persons be, and they hereby are, stayed, enjoined and restrained from commencing, prosecuting, continuing or enforcing any suit or action or proceeding of any kind other than any proceeding to be brought by the United States Securities and Exchange Commission against the defendant Charisma Securities Corporation, or the Trustee appointed herein, without first obtaining an order of this Court, and

ORDERED further that, pursuant to Section 6(c)(1) of the 1970 Act, 15 U.S.C. § 78fff(c)(1), all creditors of the defendant Charisma Securities Corporation and all other persons be, and they hereby are, stayed,

ORDER APPOINTING TRUSTEE

enjoined and restrained for a period of fourteen (14) days or such other time as may be subsequently ordered by this Court from enforcing valid, nonpreferential liens or pledges against the property of the defendant Charisma Securities Corporation, and from exercising the set off of debts provided for in Section 68 of the Bankruptcy Act (11 U.S.C. 108).

IV. ORDERED, that this Court shall retain jurisdiction of this matter for all purposes.

/s/ Milton Pollack,
United States District Judge.

Dated: March 9, 1972,
New York, N.Y.

31a

ORDER FOR THE NOTICE TO BE GIVEN OF HEARING ON
OBJECTIONS TO THE TRUSTEE.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

Upon the Application and Affidavit attached hereto of Edwin L. Gasperini, Esq., Trustee ("Trustee") for the liquidation of the business of Charisma Securities Corporation, (the "Debtor"), appointed pursuant to the Order of the Hon. Milton Pollack, entered on March 9, 1972, it is hereby:

1. ORDERED that, pursuant to Sections 161 and 162 of the Bankruptcy Act, May 5th, 1972 at 2:15 P.M., Room C10, United States Court House, Foley Square, New York, New York be, and it hereby is, fixed as the time and place for the hearing of objections to the retention in office of the Trustee upon the ground that he is not qualified or not disinterested as provided in Sections 156 and 158 of said Act.

ORDER FOR THE NOTICE TO BE GIVEN OF HEARING ON
OBJECTIONS TO THE TRUSTEE

2. ORDERED that, the Trustee give notice by mail of such hearing in accordance with Section 161 of the Bankruptcy Act.

Dated: New York, New York,
March 11, 1972.

s/ Milton Pollack,
United States District Judge.

AFFIDAVIT OF EDWIN L. GASPERINI.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

State of New York,
County of New York, ss:

EDWIN L. GASPERINI, being duly sworn, deposes and
says:

1. On March 9, 1972, by order of the Honorable
Milton Pollack, United States District Judge for the
Southern District of New York, I was duly appointed
Trustee ("Trustee") for the liquidation of the business
of Charisma Securities Corporation, with all the duties
and powers of the Trustee as prescribed in the Securities
Investor Protection Act of 1970.

2. I submit this affidavit in support of my
application for an order fixing time and place for
hearing of objections to retention of Trustee in
office.

AFFIDAVIT OF EDWIN L. GASPERINI

3. Pursuant to Section 6(c)(1) of the Securities Investor Protection Act of 1970 a liquidation proceeding under the Act is to be conducted in accordance with, and as though it were being conducted under, Chapter X of the Bankruptcy Act and certain provisions of Chapters I-VII which would not ordinarily apply to a Chapter X proceeding.

4. Pursuant to Section 161 and 162 of the Bankruptcy Act, this Court is to hold a hearing at which objections to the retention in office of the Trustee upon the ground that he is not qualified or not disinterested as provided in Section 156 and 158 of the Bankruptcy Act are to be heard.

5. As it is necessary to give all customers and creditors of the Debtor 30 days' notice of such hearing pursuant to Section 161 of the Bankruptcy Act and as we are still compiling lists of such creditors and customers, I would respectfully suggest May 1, 1972 or any day thereafter as an appropriate time for holding such hearing.

AFFIDAVIT OF EDWIN L. GASPERINI

6. I herewith submit for the approval of this Court the attached Order which directs that a hearing be held pursuant to Sections 161 and 162 of the Bankruptcy Act and that the Trustee give notice thereof by mail pursuant to said Section 161.

WHEREFORE, I respectfully request that this application be granted.

(Sworn to by Edwin L. Gasperini, Trustee March 17, 1972.)

MEMORANDUM DECISION BY POLLACK, J.

There being no opposition, the trustee is found to be qualified and disinterested and his appointment is confirmed as trustee.

May 5, 1972

s/ Milton Pollack,
U.S. Dist. Judge.

So. Ordered.

CORRESPONDENCE BETWEEN JUDGE POLLACK AND
TRUSTEE OR COUNSEL.

(See opposite and following pages.)

37a
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, NEW YORK 10007

MILTON POLLACK
JUDGE

December 19, 1973

Edwin L. Gasperini, Esq.
Gasperini, Koch & Savage
10 East 53rd Street
New York, N.Y. 10022

RE: SIPC v. Charisma Securities Corp.
72 Civ. 981(MP)

Dear Sir:

Kindly submit to the Court for inspection the 37 claims
of customers processed and the accountants' reports
of David Berdon & Co. furnished to the Trustee.

Very truly yours,

Franklin K...
Secretary to
Judge Milton Pollack

December 26, 1973

FH HAND

Hon. Milton Pollack
United States District Court
Southern District of New York
United States Court House
New York, N. Y.

Re: SIPC v. Charisma Securities Corp.
72 Civ. 981 (MP)

Dear Judge Pollack:

In accordance with your Secretary's letter of December 19, 1973, we are transmitting herewith our 37 customer claim files in the above matter. My accountants, David Berdon & Co., prepared two Reports on customer claims, which Reports were previously supplied to you in connection with the hearing on customer claims held on January 19, 1973. For your convenience, we are enclosing herewith copies of these Reports.

I and Counsel would be pleased at any time to meet with Your Honor, and discuss any phase of the liquidation on which you may wish further information.

Respectfully submitted,

Edwin L. Gasperini

Enclosures

39a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, NEW YORK 10007

MILTON POLLACK
JUDGE

RECEIVED

JAN 11 1974

GASPERINI, KOCH & SAVAGE
January 10, 1974

Edwin L. Gasperini, Esq.
Gasperini, Koch & Savage
10 East 53rd Street
New York, N.Y. 10022

Re: Securities Investor Protection Corp.
v. Charisma Securities Corp.
72 Civ. 981 (MP)

Dear Mr. Gasperini:

Judge Pollack has directed me to communicate with you and your firm, as your attorneys, requesting a breakdown of your hourly records into categories reflecting the services rendered. The hours should be divided into senior and junior time, and should be addressed to the following categories:

- (1) Claims of customers
- (2) Assets of Charisma
- (3) Liabilities of Charisma
- (4) Administrative matters
- (5) Court papers and research
- (6) Legal research
 - (a) The Securities Investor Protection Act
 - (b) The securities industry

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT HOUSE

NEW YORK, NEW YORK 10007

MILTON POLLACK
JUDGE

Such a breakdown should enable the Court to more readily appraise the respective services of accountants, Trustee, and attorneys in this liquidation.

Very truly yours,

Peter [unclear]

Law Clerk to Judge Pollack

cc: Wilfred R. Caron, Esq.

January 21, 1974

BY HAND

Hon. Milton Pollack
 United States District Court
 Southern District of New York
 United States Court House
 New York, New York 10007

Re: Securities Investor Protection Corp.
 v. Charisma Securities Corp.
 72 Civ. 981 (MP)

Dear Judge Pollack:

In answer to the letter of January 10, 1974 from your Law Clerk, Peter Wang, requesting a breakdown of my and my firm's hourly records into categories reflecting services rendered, please be advised that according to our time sheets, the hours spent by myself and my attorneys to complete this liquidation may be categorized as follows:

| | Trustee | Attorneys at Trustee's Firm | | Total |
|--|----------|--------------------------------|-------------|-------------|
| | | Sr. | Jr. | |
| (1) Claims of customers | 4.5 | 12.6 | 32.8 | 49.9 |
| (2) Assets of Charisma | 1 | 5.8 | 22.8 | 29.6 |
| (3) Liabilities of Charisma | - | - | 2.9 | 2.9 |
| (4) Administrative matters | 48.4 | 29.3 | 70.8 | 148.5 |
| (5) Court papers, court appearances and related preparation | 18.8 | 64.4 | 144.8 | 228. |
| (6) Legal research | <u>5</u> | <u>10.1</u> | <u>80.1</u> | <u>95.2</u> |
| TOTAL | 77.7 | 122.2 | 354.2 | 554.1 |

The times listed in the above category have been placed in the category to which the work most closely related, even though the work may have had relevance in other areas as well. For example, the time spent in processing customer claim forms is indicated in "Claims of customers", while I considered the initial setting up of mailings to customers as an administrative matter and included that time in the category "Administrative matters". As a further example, the time spent in preparing certain problem cases for presentation at the hearing on objection to Trustee's determination is listed under "Court cases, court appearances and related preparation". Legal research conducted on aspects of these problem cases has been listed under "Legal research".

I have expanded category (5) from "Court papers and research" to "Court papers, court appearances and related preparation", which is a more descriptive term of the work done. Category (6), "Legal research" has not been broken down into sub-categories, since the legal research covered both sub-categories, as well as other areas of necessary legal research and a meaningful separation between them could not be made.

In addition to the above, in the Applications for Final Allowance of Compensation it was estimated that after October 1, 1973 an additional 50 hours by the attorneys would be required to close the Estate. The actual time expended to close the Estate since October 1 through December 31, 1973 was 32-1/2 hours for senior attorneys, and 53.1 hours for junior attorneys, for a total of 85.6 hours.

Respectfully submitted,

Edwin L. Gasperini, Trustee

ELG/js

TRUSTEE'S FINAL REPORT AND ACCOUNT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

TO THE HON. MILTON POLLACK,
UNITED STATES DISTRICT JUDGE:

Edwin L. Gasperini as Trustee for the liquidation of the business of Charisma Securities Corporation ("Charisma") under the Securities Investor Protection Act of 1970 ("S.I.P.A.") respectfully submits his final report and account as follows:

1. On March 9, 1972, the customers of Charisma, formerly located at 6 Maiden Lane, New York, New York, were adjudged in need of protection under S.I.P.A. by the order of the Honorable Milton Pollack, United States District Judge for the Southern District of New York. The same order appointed the undersigned as Trustee for the liquidation of the business of Charisma and the firm of Gasperini, Koch & Savage, 10 East 53rd Street, New York, New York, was appointed counsel to the Trustee.

TRUSTEE'S FINAL REPORT AND ACCOUNT

NOTICE TO CUSTOMERS AND THE MARSHALLING OF ASSETS.

2. Pursuant to court order, I caused to be published in the *New York Times* and the *New York Law Journal*, on March 24, 1972, notice to customers and creditors of Charisma of my appointment as Trustee.

3. I engaged the certified public accounting firm of David Berdon & Co., 415 Madison Avenue, New York, New York, to assist me in making an inventory of the assets of Charisma and comparing customer claims with the records of Charisma.

4. Immediately after my appointment, I obtained a court order directing all banks holding funds in the name of Charisma to pay over such funds to the Trustee. A copy of this order was served on five banks; their responses to the order were as follows:

(a) National Bank of North America turned over to me a check in the amount of \$13.41.

(b) Chelsea National Bank and Marine Midland Bank advised that they were not holding any funds in the name of Charisma.

(c) Security National Bank advised that it was owed \$21.29 by Charisma.

TRUSTEE'S FINAL REPORT AND ACCOUNT

(d) Bank of New York advised it was holding 25 shares of Romanoff Industries, as security for a loan to the President of Charisma, Stephen Adlman.

5. I promptly obtained and served on the United States Postal Service a Court Order directing that all mail addressed to Charisma be delivered to myself as Trustee. I was informed by the United States Postal Service that they were holding no mail for Charisma, but that any mail received in the future would be directed to me.

6. Pursuant to Court Order, I filed a bond in the amount of \$10,000.

7. Immediately after my appointment I met with Charles Mihalek of the Securities and Exchange Commission ("S.E.C.") to discuss the background leading to the collapse of Charisma and corresponded with the National Association of Securities Dealers and the New York State Attorney General's office concerning their investigations of Charisma.

8. The information received indicates that Charisma ran into serious financial difficulties in February, 1971, and ceased doing business by the end of March

TRUSTEE'S FINAL REPORT AND ACCOUNT

or early April, 1971. The firm was evicted from offices at 6 Maiden Lane, in mid-May, for non-payment of rent. In connection with the eviction, the landlord had seized some of the records of Charisma and subsequently released these records to the New York Regional Office of the S.E.C. The S.E.C. has advised that such records as they received were so incomplete that the New York Regional Office was unable to verify earlier trial balances submitted by Charisma. Subsequently, certain of these records disappeared from the offices of the S.E.C.

9. Upon my appointment as Trustee, I obtained possession of the remaining records of Charisma held by the S.E.C. My counsel and accountants also examined Charisma's former offices at 6 Maiden Lane, and in discussing Charisma with the landlord, obtained possession of all of the records remaining with the landlord. The records of Charisma thus available to were sketchy and incomplete. They consisted of the following:

- (a) Checkbook, with checks numbered 1001 to 1018 having been used.

TRUSTEE'S FINAL REPORT AND ACCOUNT

- (b) One binder P&S ticket 8/17/70 - 2/12/71.
- (c) One ledger stock record.
- (d) Three looseleaf binders, salesmen records and customer list.
- (e) One P&S blotter, 8/20/70 - 12/31/70.
- (f) One P&S blotter, 1/4/71 - 3/22/71.
- (g) Two general ledgers - customer statements.
- (h) One general ledger.
- (i) One ledger - cash receipts and disbursements.
- (j) One set new account cards - Adlman's customer list.
- (k) Two checkbooks in the name of Stephen Lee Adlman.
- (l) Miscellaneous papers, prospectuses and financial sheets.

10. From these records, my counsel and accountants identified approximately 800 names of persons or companies who might be customers of Charisma. On April 13, 1972, each of these persons was sent a copy of the notice published in the newspapers, together with a customer and/or broker-dealer claim form and a notice fixing

TRUSTEE'S FINAL REPORT AND ACCOUNT

the date for a heading of objections for the retention in office of the Trustee upon the ground that he was not qualified or disinterested within the meaning of sections 158, 166 and 162 of the Bankruptcy Act.

11. The hearing on the qualifications and disinterestedness of the Trustee was held on May 5, 1972 in accordance with the order of the Court. There were no objections and I was found qualified and disinterested.

CUSTOMER CLAIMS.

12. The present proceeding is the 34th liquidation instituted by the Securities Investor Protection Corporation ("S.I.P.C.") and only the 12th instituted in the New York area since the first S.I.P.C. action commenced on March 29, 1971, one year prior to the start of the instant proceeding. Because of the newness of S.I.P.C. and the lack of authority or precedent in the area of such liquidations, it was necessary for me to undertake a study of S.I.P.A. with particular reference to the Bankruptcy Act, and to discuss frequently with other S.I.P.C. Trustees problems common to and methods of expediting the liquidation.

TRUSTEE'S FINAL REPORT AND ACCOUNT

13. One of the most important purposes of the S.I.P.A. was to expedite the return of cash or securities owed to customers of a brokerage house in liquidation. Accordingly, I deemed it essential to proceed as rapidly as possible with the processing of customer claims notwithstanding the poor state of the debtor's records.

14. The notice sent to potential customers of Charisma had specified that all claims should be filed with me prior to June 1, 1972. As of that date, I had received 33 claims. Within 1-½ months thereafter approximately 80% of these claims had been fully investigated and an Order was submitted by me and signed by the Court directing payment of funds advanced by S.I.P.C. to 20 customers in satisfaction of their claims against Charisma. I determined to disallow 7 claims. The remaining 6 claims required additional documentation and investigation.

15. Subsequently, 4 more claims were received and processed by me. Three of the claims related to the Fischer family, for which I had granted an extension of time to file, and the fourth was a claim by Sanford

TRUSTEE'S FINAL REPORT AND ACCOUNT

Siegel. The processing of these 4 claims and the 6 previously unresolved claims was completed on December 15, 1972, with the submission and signing of a second order directing payment to 4 persons in satisfaction of their claims against Charisma. I determined to reject the remaining claims.

16. Ordinarily, in a liquidation proceeding of this sort, the claim forms could be routinely processed to determine whether or not they agreed with the records of the debtor. In this case, however, the records were so deficient that in order to effect the purposes of S.I.P.C. it was necessary, where independent verification was lacking, for my counsel and accountants to undertake a more thorough examination of the facts surrounding the claim.

17. Annexed hereto as Schedule 1 is a complete listing of claims filed and their dispositions. Certain claims presented unusual or complicated issues and these are discussed in greater detail on pages 14-18 of the application for compensation of my counsel, submitted together herewith.

TRUSTEE'S FINAL REPORT AND ACCOUNT

18. On December 29, 1972, notice was given to all persons, whose claims were denied, that they had an opportunity to appear and object to the Trustee's determination, at a hearing in the United States District Court, on January 19, 1973.

19. On the hearing date, Arthur Adams Fischer appeared on behalf of the three Fischer claims and M. Jim Karp to object to the Trustee's determination of his claim. After hearing argument by all sides and testimony of Arthur Adams Fischer and M. Jim Karp, the Court disallowed the Fischer claims, and awarded Karp \$8,500 out of his claim of \$18,650. As a result of this hearing all claims of customers against the Estate of Charisma have been resolved and terminated. Out of 37 claims received, 24 were allowed in whole or in part amounting to \$42,206.62, while 13 claims in the amount of \$92,280.37 were disallowed. All funds used to pay the 24 allowed claims were advanced by S.I.P.C.

TRACING OF ASSETS AND INVESTIGATION OF FRAUD.

20. In addition to the bank deposit of \$13.41 referred to earlier in Paragraph 4(a) of this report, the only cash or securities of Charisma which has

TRUSTEE'S FINAL REPORT AND ACCOUNT

come into my possession is a refund of \$1,353.15 obtained from the New York Telephone Company.

21. At the time of my appointment, the Charisma office at 6 Maiden Lane, New York, New York, had been closed up by the landlord for approximately 10 months, and the furniture had been removed to a storage room in the building where it is still being held by the landlord as security for unpaid rent. When the premises were examined on April 14, 1972, by my counsel and accountant, there were three wooden desks, one swivel chair, one side chair and a clock in various stages of disrepair being held by the landlord.

22. Bernard Hollander was appointed by the Court to appraise the property, and Underwriters Salvage Co. to act as auctioneer in the event that it was sufficiently valuable to sell. I am informed by Mr. Hollander that he appraised the property at approximately \$92.50. It is apparent that this property cannot be profitably auctioned because of the cost involved. In addition, my counsel has expressed the opinion that it would be similarly unprofitable to commence an action to recover the property from the

TRUSTEE'S FINAL REPORT AND ACCOUNT

landlord. Accordingly, I recommend to the Court that the property be abandoned to the landlord.

23. From the records of Charisma that were recovered, it appeared that Charisma has successfully underwritten three companies - Plastic Associates, Romanoff Industries and Synthatron Corporation. Charisma also participated in several other new issues, including Keystone Business Controls, Inc., now Cannon Industries, Inc., Visual Equities, Inc., Tabulating Stock Forms, Inc. and Promech Corporation.

24. Because of the possibility that Charisma might have received warrants for participating in these new issues I requested my counsel and accountant to examine the old prospecti. The prospecti disclosed that the following warrants had been issued to Charisma:

1. 7,500 Warrants of Plastic Associates & Co., Inc., exercisable at \$4.40 until November 10, 1975.

2. 5,000 Warrants of Cannon Industries, Inc., (formerly Business Controls, Inc.) exercisable at \$3.30 until December 18, 1974.

3. 10,000 Warrants of Synthatron Corporation exercisable at \$4.00 until April 16, 1975.

TRUSTEE'S FINAL REPORT AND ACCOUNT

4. 5,000 Warrants of Visual Equities, Inc., exercisable at \$7.70 until August 12, 1975.

5. 700 Warrants of Tabulating Stock Forms, Inc., exercisable at \$5.35 - \$6.40 until November 24, 1974.

6. 75,000 Warrants of Promech Corporation, exercisable at \$4.40 until November 3, 1972.

25. I requested R.&M. Smythe & Co., Inc., securities analysts, to evaluate the above Warrants. They reported that, with respect to the first five Warrants listed above, the exercise price was so far in excess of the value of the stocks, and the future prospects of the companies involved so dubious, that the Warrants have no potential value at this time. With respect to the 75,000 Warrants of Promech Corporation, it was determined that there was no time at which the exercise price for the Warrants was below the market price of Promech stock; accordingly, I allowed the Warrants to expire unexercised on November 13, 1972. A second discussion by my counsel with R.&M. Smythe relative to the first five warrants listed above again elicited the opinion that none of the Warrants have any value. Accordingly, it is my recommendation that they be abandoned.

TRUSTEE'S FINAL REPORT AND ACCOUNT

26. I supervised the preparation by my accountants and counsel of answers to specific requests for information from S.I.P.C. These answers included information on the customer claims and estate of Charisma, the reasons for the collapse of the debtor, the existence of unsecured loans to officers of Charisma, and the status of the proceedings. I further requested my counsel to undertake an examination of all known facts surrounding the collapse of Charisma and the disappearance of the cash and securities belonging to the firm and its customers. In particular, I requested their advice on whether there was a cause of action against any person for these losses. I was advised by my counsel that they believed that a claim could be made under the Federal Securities Laws that Stephen Adlman, President of Charisma, had engaged in a scheme to defraud customers of the firm, and had, as part of the same transaction, possibly embezzled firm securities and subordinated loans.

27. Upon receipt of this advice, I discussed the matter with officials at S.I.P.C. and received authorization to commence a federal action for violation

TRUSTEE'S FINAL REPORT AND ACCOUNT

of Federal Securities Law against Adlman, on behalf of S.I.P.C., and on my own behalf as Trustee of Charisma. A Complaint together with an affidavit and Order of Attachment was prepared by my counsel and was submitted to the Court. An application for permission to commence litigation and a subsequent Memorandum of Law were also submitted. This application was denied. The Court suggested that before another application was made, Adlman should be examined under the Bankruptcy Law. I discussed this matter at length with S.I.P.C. and with my counsel because of the danger that any compulsory examination of Adlman under the Bankruptcy Law might confer immunity from criminal prosecution.

28. In April, 1973, my counsel informed me that Adlman had been indicted in the Southern District of New York on charges of receiving stolen property, and that further investigations were being conducted by the United States Attorney's office for the Southern District of New York. The United States attorney had advised my counsel that examination of Adlman under the Bankruptcy Act might cause serious difficulties for his office. Subsequently, on or about September 25, 1973,

TRUSTEE'S FINAL REPORT AND ACCOUNT

Adlman was again indicted in the Southern District of New York with six others and charged with various counts of conspiracy and securities and mail fraud in the 1971 sale of stock in Automated Information Systems, Inc. My Counsel also cautioned that the chances of economic recovery from Adlman had considerably lessened as a result of his indictments and impending trials. Accordingly, I decided to forego any attempt to examine Adlman under the Bankruptcy Act and to discontinue further attempts to commence litigation against him.

29. I have further determined that the Bank of New York is holding 25 shares of Romanoff Industries in the name of Charisma Securities Co. as collateral on a loan to Stephen Lee Adlman, the balance of which presently stands at \$18,749.15. R.&M. Smythe & Co. has advised me that the value of these shares is not in excess of \$10 and I recommend that they be abandoned.

30. My counsel has now completed its examination of all the known facts surrounding the collapse of Charisma Securities, and have advised me that except as previously discussed they have not found sufficient

TRUSTEE'S FINAL REPORT AND ACCOUNT

evidence of wrongdoing or misappropriation of assets to justify commencing suit against any person or institution. They have recommended to me that these proceedings be closed and the unabandoned assets of the Estate of Charisma Securities Co. consisting of \$1,366.56 in cash be disbursed to the proper creditors.

Schedule 2 annexed hereto sets forth the claims of the general creditors of Charisma amounting to \$117,766.

Schedule 3 annexed hereto sets forth all monies received by the Trustee and describes the source thereof.

Schedule 4 annexed hereto sets forth all disbursements made by the Trustee and describes the purposes thereof.

Attached hereto as exhibits A, B, and C are bank statements and cancelled checks utilized in the administration of the estate; all checks issued by me have been cashed.

31. As noted in Schedule 3, S.I.P.C. has advanced \$17,973.75 for the administrative expenses of the Estate of Charisma. Under Section 64A1 of the Bankruptcy Act (1) USC 104A(1) the costs and expenses of adminis-

TRUSTEE'S FINAL REPORT AND ACCOUNT

tration have priority over all other debts of the estate and are to be paid in full in advance of the payment of any dividend or general unsecured claims. S.I.P.C. has advanced all monies to pay the costs of administration of the estate as indicated above and to that extent S.I.P.C. has priority over all other creditors. The value of the undistributed assets in the estate, \$1,366.56, is substantially less than \$17,973.75; accordingly, there are no assets available for distribution in satisfaction of general unsecured claims.

32. I request as Trustee an allowance of final compensation in the sum of \$7,500.00 as set forth in the application filed concurrently herewith. In addition, my attorneys have requested compensation in the amount of \$30,895.00 as set forth in the application filed concurrently herewith.

33. In accordance with section 6 (f) of S.I.P.C. providing for S.I.P.C. advances for administrative expenses to effectuate the liquidation procedure, the Trustee requests that the Court direct and approve the advance by S.I.P.C. of monies for the payment of administrative costs and expenses, including the

TRUSTEE'S FINAL REPORT AND ACCOUNT

allowances of compensation awarded to the Trustee, and his attorney, and the Trustee requests the entry of an Order to that effect. Upon payment by S.I.P.C. of such administrative expenses as may be allowed by the Court, the Trustee proposes that he then pay to S.I.P.C. the balances on deposit in the accounts maintained with Marine Midland Bank (81657-6 and 81658-4).

WHEREFORE, the Trustee respectfully prays that (a) a final meeting of creditors be held before the Court upon notice to S.I.P.C., the Securities and Exchange Commission, all creditors whose claims have been filed with the Trustee but which have not been satisfied in whole; (b) his Final Report and Account be approved and confirmed; (c) the Court fix and determine the allowances of compensation and reimbursement of disbursements, to the Trustee and his attorney, and approve the payment of additional compensation to the accountants; (d) the Court direct and order the advance by S.I.P.C. to the Trustee of sufficient monies to pay the foregoing administrative costs and expenses, including the allowances of compensation to the

TRUSTEE'S FINAL REPORT AND ACCOUNT

Trustee, his attorney, and accountants and direct the Trustee upon receipt of such advance and distribution thereof to remit to S.I.P.C. the then balances on deposit to his account in each of the above-described accounts (e) he be authorized to abandon the unmarketable securities described above; (f) he be discharged and his bond cancelled; and (g) he be granted such other and further relief as is just.

Dated: New York, New York,
November 2, 1973.

Edwin L. Gasperini

(Verified by Edwin L. Gasperini Nov. 2, 1973.)

EDWIN L. GASPERINI, TRUSTEE,
DEALERSMA SECURITIES CORPORATION, IN LIQUIDATION

CLAIMS FILED BY CUSTOMERS AND DISPOSITION THEREOF

| <u>CLAIMANT</u> <u>SECURITIES CLAIMED</u> | <u>CLAIM</u> <u>NO.</u> | <u>CASH</u> <u>CLAIMED</u> | <u>N</u> <u>O</u> |
|--|----------------------------|-------------------------------|----------------------|
| ALBERT and GLORIA BROKMAN Cannon Industries, Inc. (Formerly Romanoff Industries, Inc.; Formerly Keystone Business Controls, Inc.) | 2 | | |
| WILLIAM DANZY and ANTHONY SCIBELLI Continental Dynamics | 3 | | 4 |
| PAUL KAPCHAN | 10 | \$ 500.00 | |
| MOE and ANNE LASKY | 14 | 647.50 | |
| AF JUR LUCAS | 19 | 500.00 | |
| AUGUST A. RICARDI Continental Dynamics | 22 | | 2 |
| JOSEPH RUBIN | 23 | 1,000.00 | |
| ELLIOT SASS | 25 | 500.00 | |

| <u>NUMBER OF SHARES</u> | <u>DAMAGE CLAIMED</u> | <u>VALUE AS OF FILING DATE</u> | <u>DISPOSITION OF CLAIM</u> |
|-----------------------------|---------------------------|------------------------------------|---------------------------------------|
| 1,000 | | \$1,000.00 | \$1,000 paid in lieu of securities |
| 0,000 | | 2,400.00 | \$2,400 paid in lieu of securities |
| | | | Cash paid |
| | | | Cash paid |
| | | | Cash paid |
| 0,000 | | 1,200.00 | \$1,200 paid in lieu of securities |
| | | | Cash paid |
| | | | Cash paid |

SCHEDULE 1, ANNEXED TO FINAL REPORT AND ACCOUNT.

EDWIN L. GASPERINI, TRUSTEE,
CHARISMA SECURITIES CORPORATION, IN LIQUIDATION

CLAIMS FILED BY CUSTOMERS AND DISPOSITION THEREOF

| <u>CLAIMANT</u> <u>SECURITIES CLAIMED.</u> | <u>CLAIM</u> <u>NO.</u> | <u>CASH</u> <u>CLAIMED</u> | <u>N</u> <u>OF</u> |
|---|----------------------------|-------------------------------|-----------------------|
| LAWRENCE L. SHAPIRO | 26 | \$1,000.00 | |
| A. DIMON, JR. | 27 | 2,500.00 | |
| RICHARD STRICKLER | 29 | 300.00 | |
| HARRY WEISS | 32 | 1,000.00 | |
| JEFFREY M. YOUNG | 33 | 2,000.00 | |
| GUSSIE EDELSON | 4 | 266.62 | |
| JOSEPH FIELD | 5 | 5,500.00 | |
| ERIC LIFF | 16 | 2,580.00 | |
| SHIRLEY PENNETT | 1 | 7,500.00 | |
| THOMAS GUILIANI The Gulf Industries, Inc. | 2 | | |

| <u>NUMBER</u> <u>SHARES</u> | <u>DAMAGE</u> <u>CLAIMED</u> | <u>VALUE AS OF</u> <u>FILING DATE</u> | <u>DISPOSITION OF CLAIM</u> |
|--------------------------------|---------------------------------|--|-----------------------------|
| | | | Cash paid |
| | | | Cash paid |
| | | | Cash paid |
| | | | Cash paid |
| | | | Cash paid |
| | | | Cash paid |
| | | | \$1,477.50 paid |
| | | | \$1,591.00 paid |
| | | | Cash paid |
| 100 | \$ 417.50 | | \$ 417.50 paid |

SCHEDULE 1, ANNEXED TO FINAL REPORT AND ACCOUNT

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EDWIN L. GALLERINI, TRUSTEE,
CHARISMA SECURITIES CORPORATION, IN LIQUIDATION

CLAIMS FILED BY CUSTOMERS AND DISPOSITION THEREOF

| <u>CLAIMANT</u> <u>SECURITIES CLAIMED</u> | <u>CLAIM</u> <u>NO.</u> | <u>CASH</u> <u>CLAIMED</u> | <u>NU</u> <u>OF</u> |
|--|----------------------------|-------------------------------|------------------------|
| LILLIAN HATTAB Romanoff Industries, Inc. | 9 | | |
| MONARD S. LEVENTHAL, Esq. Romanoff Industries, Inc. | 15 | | |
| DR. FRANK LO PRESTI Romanoff Industries, Inc. | 17 | | |
| PHILIP and ROSE KERBEL Syntharon Corporation | 13 | \$4,000 | 1 |
| PAUL RAENOWITZ Plastic Associates | 21 | | |
| STANLEY W. SALTZ Technical Measurement | 24 | | |
| URIEL STEINER | 28 | 2,000 | |
| MURRAY WATT | 31 | 400 | |
| ABRAHAM GANZ | 6 | | |
| M. JIM KARP | 11 | 18,650.00 | |

| <u>NUMBER SHARES</u> | <u>DAMAGE CLAIMED</u> | <u>VALUE AS OF FILING DATE</u> | <u>DISPOSITION OF CLAIM</u> |
|--------------------------|---------------------------|------------------------------------|-----------------------------|
| 300 | \$1,248.00 | | \$1,248.00 paid |
| 200 | 833.00 | | 833.00 paid |
| 100 | 416.50 | | 416.50 paid |
| 000 | | \$1,000 | Disallowed |
| 200 | | 250 | Disallowed |
| 200 | | -0- | Disallowed |
| | | | Disallowed |
| | | | Disallowed |
| 100 | | 100 | Disallowed |

Objected to and \$10,150
disallowed after a Court
hearing

SCHEDULE 1, ANNEXED TO FINAL REPORT AND ACCOUNT

**EDWIN L. GASPERINI, TRUSTEE,
CHARISMA SECURITIES CORPORATION, IN LIQUIDATION**

CLAIMS FILED BY CUSTOMERS AND DISPOSITION THEREOF

| <u>CLAIMANT SECURITIES CLAIMED</u> | <u>CLAIM NO.</u> | <u>CASH CLAIMED</u> |
|---|----------------------|-------------------------|
| M. J. KARP | 12 | \$2,500.00 |
| BERMAN LETTERMAN | 18 | 300.00 |
| SANFORD SIEGEL | 37 | \$1,000.00 |
| LEON B. GOLDBERG | 7 | '0 |
| JESSE MALBIN | 20 | 0 |
| ARTHUR ADAMS FISHER Starrett Housing Corp. | 34 | 19,727.00 |
| MARIE A. FISCHER TRUST Starrett Housing Corp. Re. Inhoff Industries | 36 | \$2,232.00 |
| LEE J. FISHER JR. | 35 | \$1,000.00 |

| <u>NUMBER OF SHARES</u> | <u>DAMAGE CLAIMED</u> | <u>VALUE AS OF FILING DATE</u> | <u>DISPOSITION OF CLAIM</u> |
|-----------------------------|---------------------------|------------------------------------|--|
| | | | Disallowed |
| | | | Disallowed |
| | | | Cash Paid |
| | | | Withdrawn |
| | | | Withdrawn |
| 1,111 | | \$41,393.00 | Objected to and Disallowed after hearing |
| 1,311 | | \$49,333.00 | Objected to and Disallowed after hearing |
| 1,000 | | \$ 1,000.00 | Objected to and Disallowed after hearing |

SCHEDULE 1, ANNEXED TO FINAL REPORT AND ACCOUNT

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EDWIN L. GASPERINI, TRUSTEE
CHARISMA SECURITIES CORPORATION, IN LIQUIDATION

CLAIMS FILED BY CUSTOMERS AND DISPOSITION THEREOF

| <u>CLAIMANT</u> | <u>CLAIM NO.</u> | <u>CASH CLAIMED</u> | <u>DISPOSITION OF CLAIM</u> |
|----------------------------|----------------------|-------------------------|-----------------------------|
| WALTON RICHARDSON | 30 | | |
| 1. Norlan Elaine Baynes | | \$ 350.00 | |
| 2.) Leonard B. Faupel | | 500.00 | |
| 3. Theodore A. Schueler | | 2,000.00 | |
| 4. Audley A. Bestall | | 600.00 | |
| 5. Emanuel Budnick | | 200.00 | |
| 6. John Zeleznock | | 200.00 | |
| 7. Rochelle Curran | | 1,000.00 | |
| 8. Anthony M. Chudyk | | 2,000.00 | |
| 9.) Clifford J. Sausville | | 200.00 | |
| 10. Catherine M. McCoy | | 600.00 | |
| | | <u>\$7,650.00</u> | \$7,650 paid |

SCHEDULE 2, ANNEXED TO FINAL REPORT AND ACCOUNT.

Schedule 2

General Creditors of the Estate

| | |
|--|----------------|
| New York Telephone Company | \$ 1,488. |
| Oxford Lease/Auto Plan, Inc.; Division of Lane Auto Lease, Inc. | 978. |
| Joe Limousine Service | 5,629. |
| Humble Oil & Refining Company | 3,388. |
| Robert Mirsky & Co. | 3,413. |
| Permaprint, Inc. | 17. |
| Equitable Stationery Company | 723. |
| Internal Revenue Service | 39,479. |
| Empire Office Equipment Inc. | 281. |
| State Tax Commission of the State of New York | 250. |
| Arthur Adams Fischer, Lee J. Fisher, individually and as Trustees of the Trust of Marie A. Fischer dated February 23, 1962 | <u>62,120.</u> |
| | \$117,766. |

SCHEDULE 3, ANNEXED TO FINAL REPORT AND ACCOUNT.

TRUSTEE'S FINAL REPORT AND ACCOUNT

Schedule 3

RECEIPTS

A. Marine Midland Bank
 Account 210-0108-006-81657-6
 Customer Account

| <u>Date</u> | <u>Payor</u> | <u>Amount</u> |
|-------------|--------------------------------|-----------------|
| 3/27/72 | National Bank of North America | \$ 13.41 |
| 8/11/73 | SIPC - Advance | 21,065.52 |
| 10/4/73 | N. Y. Telephone Co. - Refund | 1,353.15 |
| 1/9/73 | SIPC - Advance | 12,641.00 |
| 6/12/73 | SIPC - Advance | <u>8,500.00</u> |
| | | \$43,573.08 |

B. Marine Midland Bank
 Account 210-0108-006-81658-4
 Administrative Account

| <u>Date</u> | <u>Payor</u> | <u>Amount</u> |
|-------------|----------------|-----------------|
| 3/29/72 | SIPC - Advance | \$ 3,000.00 |
| 10/11/72 | SIPC - Advance | 8,947.50 |
| 2/26/73 | SIPC - Advance | 4,826.25 |
| 3/9/73 | SIPC - Advance | <u>1,200.00</u> |
| | | \$17,973.75 |

SCHEDULE 3, ANNEXED TO FINAL REPORT AND ACCOUNT
TRUSTEE'S FINAL REPORT AND ACCOUNT

Schedule 4

DISBURSEMENTS

A. Marine Midland Bank
Account 210-0108-006-81657-6
Customer Account

| <u>Date</u> | <u>Check No.</u> | <u>Amount</u> | <u>Payee</u> |
|-------------|------------------|---------------|------------------------------------|
| 8/15/72 | 101 | \$1,000.00 | Albert Brokman and Gloria Brokman |
| 8/15/72 | 102 | 240.00 | William Danzy and Anthony Scibelli |
| 8/15/72 | 103 | 500.00 | Paul Kapchan |
| 8/15/72 | 104 | 647.50 | Moe Lasky and Anne Lasky |
| 8/15/72 | 105 | 500.00 | Arthur Lucas |
| 8/15/72 | 106 | 1,000.00 | Joseph Rubin |
| 8/15/72 | 107 | 500.00 | Elliott Sass |
| 8/15/72 | 108 | 1,000.00 | Lawrence L. Shapiro |
| 8/15/72 | 109 | 300.00 | Richard Strickler |
| 8/15/72 | 110 | 1,000.00 | Harry Weiss |
| 8/15/72 | 111 | 2,000.00 | Jeffrey M. Young |
| 8/15/72 | 112 | 266.62 | Gussie Edelson |
| 8/15/72 | 113 | 416.50 | Thomas Guiliani |
| 8/15/72 | 114 | 833.00 | Lillian Hattab |
| 8/15/72 | 115 | 833.00 | Leonard S. Leventhal |
| 8/15/72 | 116 | 416.50 | Frank LoPresti |
| 8/15/72 | 117 | 5,100.00 | Walton-Richardson Co. |
| 9/22/72 | 118 | 2,500.00 | Al Simon Jr. |
| 9/26/72 | 119 | 1,477.50 | Joseph Field |

SCHEDULE 3, ANNEXED TO FINAL REPORT AND ACCOUNT

| <u>Date</u> | <u>Check No.</u> | <u>Amount</u> | <u>Payee</u> |
|-------------|------------------|-----------------|-----------------------|
| 10/2/72 | 120 | 120.00 | August A. Richardi |
| Void | 121 | | |
| 1/10/73 | 122 | 7,500.00 | Shirley Bennett |
| 1/10/73 | 123 | 2,550.00 | Walton-Richardson Co. |
| 1/10/73 | 124 | 1,000.00 | Sanford J. Siegel |
| 1/10/73 | 125 | 1,591.00 | Eric Liff |
| 7/11/73 | 126 | <u>8,500.00</u> | M. J. Karp |
| | | 42,206.62 | |

B. Marine Midland Bank
 Account 210-0108-006-81658-4
 Administrative Account

| <u>Date</u> | <u>Check No.</u> | <u>Amount</u> | <u>Payee</u> |
|-------------|------------------|---------------|---|
| 3/29/72 | 101 | 68.67 | New York Law Journal Ad - Notice |
| 3/29/72 | 102 | 58.92 | Helen A. Collins - Secretarial |
| 4/3/72 | 103 | 128.00 | Beverly Lehn - Postage |
| 4/3/72 | 104 | 167.80 | Convenient Copy Centers Inc. Photocopies |
| 4/3/72 | 105 | 207.20 | New York Times Ad - Notice |
| 4/3/72 | 106 | 46.50 | Winifred Gallant - Secretarial |
| 4/3/72 | 107 | 57.00 | Ronald Louisey - Clerical |
| 4/8/72 | 108 | 25.93 | Edith Wharton - Secretarial |
| 4/14/72 | 109 | 48.42 | Helen A. Collins - Secretarial |
| 4/21/72 | 110 | 6.00 | Helen A. Collins - Secretarial |
| 4/28/72 | 111 | 23.58 | Helen A. Collins - Secretarial |

SCHEDULE 3, ANNEXED TO FINAL REPORT AND ACCOUNT

| <u>Date</u> | <u>Check No.</u> | <u>Amount</u> | <u>Payee</u> |
|-------------|------------------|---------------|--|
| 4/28/72 | 112 | 150.81 | Auditek Inc. - Addressed mailing labels |
| 5/5/72 | 113 | 75.36 | Helen A. Collins - Secretarial |
| 5/5/72 | 114 | 50.00 | Milton J. Powers Agency Bond premium |
| 5/8/72 | 115 | 378.21 | Gasperini, Koch & Savage Disbursements 2/5-5/8/72 |
| 5/12/72 | 116 | 70.70 | Helen A. Collins - Secretarial |
| 5/12/72 | 117 | 33.00 | Helen A. Collins - Secretarial |
| 6/2/72 | 118 | 33.00 | Helen A. Collins - Secretarial |
| 6/9/72 | 119 | 100.51 | Helen A. Collins - Secretarial |
| 6/23/72 | 120 | 24.00 | Helen A. Collins - Secretarial |
| 7/21/72 | 121 | 21.25 | Helen A. Collins - Secretarial |
| 7/28/72 | 122 | 41.50 | Helen A. Collins - Secretarial |
| 8/4/72 | 123 | 17.50 | Helen A. Collins - Secretarial |
| 8/18/72 | 124 | 35.00 | Helen A. Collins - Secretarial |
| Void | 125 | | |
| 10/5/72 | 126 | 35.00 | Helen A. Collins - Secretarial |
| 10/11/72 | 127 | 50.00 | B. Hollander & Son - Appraisal |
| 10/12/72 | 128 | 8,947.50 | David Berdon & Co. - Services to 9/1/72 |
| 10/13/72 | 129 | 35.00 | Helen A. Collins - Secretarial |
| 10/13/72 | 130 | 254.37 | GK&S - Disbursements 5/8/72-10/12/72 |
| 11/10/72 | 131 | 41.50 | Helen A. Collins - Secretarial |
| 11/17/72 | 132 | 56.25 | Helen A. Collins - Secretarial |
| 12/8/72 | 133 | 175.00 | Helen A. Collins - Secretarial |
| 12/22/72 | 134 | 35.00 | Helen A. Collins - Secretarial |

SCHEDULE 3, ANNEXED TO FINAL REPORT AND ACCOUNT

| <u>Date</u> | <u>Check No.</u> | <u>Amount</u> | <u>Payee</u> |
|-------------|------------------|---------------|--|
| 1/19/73 | 135 | \$ 36.00 | Helen A. Collins - Secretarial |
| 1/26/73 | 136 | 52.00 | Helen A. Collins - Secretarial |
| 2/2/73 | 137 | 36.00 | Helen A. Collins - Secretarial |
| 2/22/73 | 138 | 247.53 | GK&S - Disbursements 10/12/72-2/22/73 |
| 2/23/73 | 139 | 36.00 | Helen A. Collins - Secretarial |
| 2/26/73 | 140 | 4,826.25 | David Berdon & Co. - Acctg. Service |
| 3/2/73 | 141 | 36.00 | Helen A. Collins - Secretarial |
| 3/9/73 | 142 | 50.00 | Milton J. Powers Agency |
| 3/9/73 | 143 | 36.00 | Helen A. Collins - Secretarial |
| 3/16/73 | 144 | 36.00 | Helen A. Collins - Secretarial |
| 4/18/73 | 145 | 36.00 | Helen A. Collins - Secretarial |
| 8/23/73 | 146 | 400.45 | GK&S - Disbursements 2/23/73-8/29/73 |
| 10/5/73 | 147 | 523.83 | GK&S - Disbursements 8/30/73-10/1/73 |
| | | <hr/> | |
| | | \$17,850.54 | |

SUMMARY OF ACCOUNTS

- A. Marine Midland Bank
Account 210-0108-006-81657-6
Customer Account

| | | |
|---------------------|--------------|------------------|
| Receipts | (Schedule 3) | \$43,573.08 |
| Disbursements | (Schedule 4) | <u>42,206.62</u> |
| Balance | | \$ 1,366.46 |

- B. Marine Midland Bank
Account 210-0108-006-81658-4
Administrative Account

| | | |
|---------------------|--------------|------------------|
| Receipts | (Schedule 3) | \$17,973.75 |
| Disbursements | (Schedule 4) | <u>17,850.54</u> |

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

TO HON. MILTON POLLACK,
UNITED STATES DISTRICT JUDGE:

Applicant respectfully represents:

1. On March 9, 1972, being the person specified by the Securities Investor Protection Corporation ("SIPC") pursuant to Section 5(b) (3) of the Securities Investor Protection Act ("S.I.P.A."), I was appointed Trustee ("Trustee") for the liquidation of the business of Charisma Securities Corporation ("Charisma") pursuant to the Order of the Hon. Milton Pollack. Since that date, I have been actively engaged in carrying out my duties as Trustee.

2. This application is made for full, fair and reasonable compensation for services rendered by Applicant as Trustee, and for reimbursement of actual and necessary costs and expenses incurred, from March 9, 1972, through the termination of these proceedings.

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION

All of the services for which compensation is requested at this time were rendered in connection with this proceeding and were performed in furtherance of my duties as Trustee. This application covers compensation and reimbursement of expenses related to this proceeding from its commencement to conclusion. I have not received any compensation since the commencement of the proceeding, my application for interim compensation having been denied by this Court on December 18, 1972.

3. I have been a practicing attorney and member of the New York State Bar for approximately 22 years, having graduated from the Harvard Law School in 1949 (cum laude). Of my professional associations, I was with the firm of Cleary, Gottlieb, Steen & Hamilton, 52 Wall Street, New York, New York, for a period of approximately six years specializing in both reorganizations and litigation. I served in the capacity of Special Assistant Attorney General and Senior Assistant Counsel to the New York State Crime Commission from 1952-1953. I have also acted as Assistant Counsel to the New York State Moreland Act Commission on Harness Racing, 1953-1954, and Counsel and Executive Director of the New York State Moreland Act Commission on the

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION

Alcoholic Beverage Control Law, 1963-1964. In 1970-1971, I was Counsel "In the Matter of an Inquiry into Certain Acts and Transactions Concerning a New York State Supreme Court Justice", and co-authored in October, 1971 "Judicial Removal in New York: A New Look", 40 Fordham Law Review 1, October, (1971). In connection with various bar association memberships, I have served in the following capacities: a member of the Committee on State Legislation of The Association of the Bar of the City of New York, 1954-1957; Committee on Federal Legislation, 1957-1960, and Chairman of this Committee, 1960-1963; member of the Committee on the Judiciary, 1963-1964, and 1970 to 1973, having just concluded three years of service on that Committee; member of the Executive Committee, 1964-1968; Chairman of the Joint Committee on Legal Referral Service, 1969 to present. I have also served as Chairman of the New York State Bar Association's Committee on Federal Legislation, 1964-1968, and as Chairman of the Criminal Justice Section, 1969-1970. Presently I am Chairman of that Association's Committee on Availability of Legal Services.

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION

I am active in, and have been continuously active throughout my career in a variety of other pro bono publico activities and organizations with charitable, philanthropic and educational purposes. I can submit an affidavit amplifying and specifying these activities, if it would be of assistance to the Court in passing on this Application.

4. In my practice, I have represented a great number of clients in both federal and state courts. Many of these cases involved the federal securities laws and the Bankruptcy Act. I am currently a member of the firm of Gasperini, Koch & Savage, having founded the firm in 1960. The firm today consists of five partners and four associates with a broad general practice in the federal and state courts.

5. I am requesting compensation of not less than \$7,500 for my services as Trustee from commencement of these proceedings until termination. This request is based upon the following factors:

A. *Time Spent*

1. I have necessarily devoted 75 hours to activities as Trustee, all of which were directly related to the results achieved. March 9, 1972 was the actual date

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION

of my appointment as Trustee by the court; however, necessary preliminary work commenced on February 1, 1972. Total hours expended by me, as Trustee, from February 1, 1972 to March 9, 1972 amount to 5.6 hours. These hours are reflected in my daily diaries which are available for inspection. I believe that a rate of compensation for my services of not less than \$100 per hour would be fair and reasonable.

B. Services Performed

1. The services rendered by me as Trustee have been detailed in the Trustee's final report, dated November 2, 1973, and in the application for compensation of my counsel, submitted together herein. These services included those summarized below:

2. As Trustee I supervised the taking possession of the debtor's extant records from the Securities and Exchange Commission ("SEC"), attended a briefing session with the members of the SEC, and arranged for my accountants and counsel to commence their examination of the debtor's records.

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION

3. I supervised the publication of my appointment as Trustee, the notification of the U.S. Post Office, the marshalling of assets from banks with which the debtor had transacted business, the mailing of notices and claim forms to approximately 800 possible customers, together with notice of a hearing on the disinterestedness of the Trustee.

4. I reviewed the reports of my accountants on customer claims, and in those cases where facts or issues were unclear, I requested additional material from my accountant and counsel until the claims were fully resolved.

5. I attended the hearing on disinterestedness and directed my counsel in preparation for the hearing of customers' objections to the trustee's determination and for the final meeting of creditors.

6. I supervised and reviewed the material prepared by my attorneys analyzing the causes of the collapse of Charisma and made the results of their investigation available to SIPC.

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION

7. I acquainted myself with the provisions of S.I.P.A., which had been passed only two years earlier, and with the current cases interpreting the Act's provisions and their interaction with the Bankruptcy Act. In addition, I conducted numerous discussions with other SIPC Trustees on mutual problems and acquainted myself with the technicalities of the securities industry.

8. Charisma had ceased doing business for approximately one year at the time I was appointed Trustee. Such records as I was able to obtain were incomplete. The only security asset remaining at the time I took over this liquidation was some broken furniture located in a storeroom. The SEC had already conducted interviews and document examination prior to my appointment. In this context, therefore, my first obligation under S.I.P.A. was to speedily resolve the claims of customers of Charisma and to make payment on valid claims from funds advanced by SIPC. 37 claims, totaling \$134,486.99, were submitted. Of this number I allowed 24, in whole or in part totaling \$42,206.62, and disallowed 13 claims totaling \$92,280.37.

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
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9. Wherever possible, I delegated routine auditing and the comparison of claim forms to debtor's records to my accountants who summarized their findings in two reports previously submitted to the court. However, because of the paucity and ambiguity of the debtors' records, and the unique nature of several claims, I found it necessary and helpful to consult frequently and at length with my accountants. A summary of the problem claims are noted on pages 14 - 18 of the application of counsel, Gasperini, Koch & Savage, for compensation, which is submitted herewith.

10. A resolution of 80% of the claims filed as of the June 1, 1972 deadline, with payment made to 20 customers, was accomplished within a period of 1-½ months. The remaining 6 uncompleted claims and late-filed claims were all resolved by December 15, 1972, within 6 months of the deadline for filing claims.

11. Under S.I.P.A. I was required to report to the SIPC the causes leading to the collapse of Charisma, and to ascertain whether such collapse had been caused by fraud or other wrongdoing. If fraud or wrongdoing were uncovered, a proceeding would be commenced against

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
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such individuals, should such a course of action appear to be in the public interest or necessary to recover assets of Charisma. Accordingly, I directed and supervised my counsel in an examination of all the known facts surrounding the demise of Charisma.

12. In November, 1972, I was advised by counsel that a claim should be asserted under the federal securities laws against Charisma's President, Stephen Lee Adlman, because of evidence indicating that Adlman had engaged in a scheme to defraud customers of the firm, part of which included embezzling firm securities and subordinating loans.

13. I discussed this matter at length with SIPC. In view of the seriousness of the charges, the public interest involved, and the possibility of some economic recovery, they authorized the institution of an action against Adlman by SIPC, as subrogee of the customers of Charisma, and myself as Trustee for Charisma as plaintiffs. Accordingly, I directed my counsel to prepare the necessary papers, and applied to the court for permission to commence an action against Adlman by order of Attachment.

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
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14. This application was denied by the Court who noted that no demand or other communication had been made to the prospective defendant, Adlman. Subsequently, a demand was made by my counsel on Adlman who said that he would refuse to answer any questions asked him about Charisma. At the suggestion of my counsel, the court considered examining Adlman under the Bankruptcy Act.

15. Because of the possibility that a compulsory examination of Adlman, under the Bankruptcy Act, would confer upon him immunity from criminal prosecution, and thus interfere with an investigation by the United States Attorney's office, I directed my counsel to consult with the United States attorney. My counsel subsequently informed me that the federal prosecutor requested that such an examination be avoided if possible because of their ongoing criminal investigation into Adlman's activities.

16. Counsel later advised that, on or about March 20, 1973, Adlman was indicted in the United States District Court for the Southern District of New York on charges of receiving stolen property in an unrelated

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
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transaction. Upon discussing this matter further with SIPC and with the federal prosecutor, my counsel concluded that the criminal indictment of Adlman had reduced the chance of an economic recovery and that the investigation by the United States attorney of Adlman's activities at Charisma might be prejudiced by a lawsuit by the Trustee or by an examination of Adlman under the Bankruptcy Act. Accordingly, counsel recommended that I discontinue further attempts to commence an action against Adlman. I have followed this advice. Subsequently, on or about September 25, 1973, Adlman with six other was indicted again in the Southern District of New York for securities and mail fraud in the 1971 sale of stock in Automated Information Systems, Inc.

17. I supervised counsel in the further search for assets of Charisma and for other possible fraudulent conduct by its officers. My counsel interviewed a number of persons who at one time or another came into contact with Charisma, and examined the records and material assembled by my accountants. They prepared a report for me which has been forwarded to SIPC tracing

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
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the dissipation of the assets of Charisma. The report notes that since my appointment as Trustee occurred almost one year after Charisma for all practical purposes had ceased doing business, there was no opportunity to recover preferences given more than four months earlier by Charisma. The report further notes that, except for Stephen Lee Adlman, there is no evidence of fraud for improper conduct on the part of banks or other institutions dealing with Charisma. Counsel has recommended that I close the estate without further action. An amplification of their recommendation is contained more fully in my attorneys' application for fees, submitted herewith. Although this investigation did not result in any direct recovery by the estate, it did serve the public interest and SIPC's requirements by highlighting the facts surrounding Charisma's demise, and by giving SIPC information necessary to recommending new laws or standards for policing the brokerage industry.

D. Complexity and Novelty of Questions Presented

18. S.I.P.A. was approximately two years old when I was appointed Trustee. There were few legal authorities dealing with the interaction between

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
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this Act and the Bankruptcy Act, or with specific provisions of section 6 of S.I.P.A. dealing with liquidations. The origins and complexity of S.I.P.A. were fully discussed in an earlier opinion by the Court in the present proceeding; consequently, the difficulty encountered by a Trustee venturing forth on such relatively uncharted waters will not be further amplified in this application.

19. Wherever possible during the course of the present liquidation, I delegated routine matters to my accountants to be summarized in their reports. However, because of the overhanging evidence of fraud surrounding the collapse of the debtor, and the questionable completeness or accuracy of the debtor's books, I felt it necessary to check certain claims presenting unusual issues with particular care and to request of my accountants and counsel more information surrounding the collapse of the debtor.

Those claims and transactions requiring special examination and those issues under S.I.P.A. requiring legal research by my counsel are explained in more detail in the application for compensation of counsel

APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION

submitted herewith. As the Court can judge from the circumstances surrounding my appointment, relatively little in this liquidation was routine, involving as it did, a relatively few number of claims, serious evidence of fraud, incomplete and inaccurate records, a long delayed appointment, and the refusal of Charisma's principal officer to cooperate with my investigation.

E. Size of the Estate

I am cognizant that a SIPC proceeding is not in the nature of a contingency action, and that payment of fees to a Trustee and his counsel should not be based upon the size of the estate or the amount of assets recovered. It should be noted that in this liquidation, customer claims in the amount of \$42,206.62 were paid against the estate of Charisma. Claims by general creditors were allowed, although no funds were available for their payment, in the amount of \$117,766. The compensation requested by the Trustee and his counsel are not disproportionate to the amounts allowed against the estate of Charisma, and are reasonable in light of the extensive legal work required in investigating the estate and its various transactions.

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APPLICATION BY TRUSTEE FOR FINAL ALLOWANCE
AND COMPENSATION

WHEREFORE, I pray that I be granted a final allowance of compensation in the sum of not less than \$7,500 for services rendered by me as Trustee in this proceeding, no allowance having heretofore been made to me.

(Sworn to by Edwin L. Gasperini, Nov. 2, 1973.)

APPLICATION BY TRUSTEE'S COUNSEL FOR A FINAL ALLOWANCE
OF COMPENSATION FOR SERVICES RENDERED.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

TO THE HON. MILTON POLLACK,
UNITED STATES DISTRICT JUDGE:

Patrick W. McGinley, a member of the Applicant
law firm, Gasperini, Koch & Savage, respectfully
represents:

On March 9, 1972, the firm of Gasperini, Koch
& Savage was appointed counsel to the Trustee of
Charisma Securities Corporation, ("Charisma") by Order
of Hon. Milton Pollack, United States District Court,
Southern District of New York, to assist the Trustee
in the liquidation of the business of Charisma pursuant
to the Securities Investor Protection Act ("S.I.P.A.").

I am an attorney-at-law and a member of the firm
of Gasperini, Koch & Savage. I have been responsible
for the overall direction and supervision of all legal
matters that have been considered in the course of the
present liquidation proceeding.

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I have been a member of the Bar of the State of New York for over 13 years, having graduated first in my class from Seton Hall University School of Law and having subsequently obtained an LL.M degree from New York University School of Law. After service in the United States Navy, I was appointed an Assistant District Attorney for New York County in which position I served for five years, the last three of which as a senior trial attorney in the Homicide Bureau. I was Assistant Commissioner of the New York City Department of Investigation for one year before becoming associated with the law firm of Cleary, Gottlieb, Steen & Hamilton, then located at 52 Wall Street, New York, New York. After two years at Cleary, Gottlieb, Steen & Hamilton, I was associated with the firm of Gasperini, Koch & Savage, becoming a partner in January, 1972. In 1970-1971, I was Assistant Counsel in the matter of an Inquiry Into Certain Acts and Transactions concerning a New York State Supreme Court Justice. I have co-authored two articles: "Judicial Removal in New York: A New Look", 40 Fordham Law Review 1, October, 1971; and "Airport Searches and Seizures - A Reasonable Approach",

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41 Fordham Law Review 293, December, 1972. I am currently engaged in an extensive civil and criminal practice before the state and federal courts.

The associate attorneys of Gasperini, Koch & Savage who have worked with me on this matter are Stephen F. Downs and Jeffrey C. Zwerling. Mr. Downs a graduate of Cornell Law School, was admitted to the New York Bar in 1969 and had practiced with another New York City Law firm for two years prior to becoming associated with Gasperini, Koch & Savage. Mr. Zwerling graduated from Columbia University School of Law in 1971 and became a member of the New York Bar in early 1972.

The applicant firm of Gasperini, Koch & Savage is requesting final compensation of \$30,895.00 for services rendered during the present liquidation from its commencement to termination. No compensation has been received by the applicant to date in this proceeding. An application for interim compensation was denied by this Court on December 18, 1972. The amount of the requested compensation is based primarily on the services rendered and the number of hours necessarily expended.

APPLICATION BY TRUSTEE'S COUNSEL FOR A FINAL ALLOWANCE
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A. *Judicial Proceedings*

Applicant has provided comprehensive legal services to the Trustee in all proceedings before this Court relating to the liquidation of the Debtor's business. A detailed chronological description of these services follows:

1. *March 9, 1972: Order of Adjudication and Appointment:*

Applicant represented Edwin L. Gasperini, Esq., at the hearing before Hon. Milton Pollack on the Application of the Securities Investor Protection Corporation ("SIPC") for the appointment of Edwin L. Gasperini as Trustee, and Applicant's appointment as his counsel, after the Court had determined that the customers of the Debtor were in need of the protection afforded by the Act. This Court entered an Order on March 9, 1972, which, inter alia, (1) adjudged that customers of the Debtor were in need of the protection afforded by the Act; (2) appointed Edwin L. Gasperini, Esq., the Trustee, and Applicant as his attorneys; (3) enjoined all creditors of the Debtor and other persons from prosecuting or enforcing any action or proceeding against the Debtor; and (4) stayed all

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creditors of the Debtor and all other persons from enforcing, for fourteen days, liens or pledges against the Debtor's property, and from exercising the rights of set-off provided for in Section 68 of the Bankruptcy Act. Applicant supervised the service of this Order on all parties in interest known to it, and arranged for the Trustee's bond, required by the Order, in the amount of \$10,000.

2. *March 17, 1972: Orders Directing Notice to Creditors; requiring Banks to Turn over Debtor's Accounts; Authorizing Trustee to Enter Into the Former Corporate Premises; and requiring Postal Authorities to Forward Mail to the Trustee*

Applicant applied for and obtained two Orders from this Court directing (1) the publication in two regional newspapers of notice of the Order of Adjudication of March 9, 1972 and the procedures for the filing of claims in this proceeding; (2) that all banks open and turn over to the Trustee the contents of all bank accounts and safe deposit and rental boxes maintained in the Debtor's name; (3) that the Trustee and his attorneys be empowered to open and enter the former corporate premises at 6 Maiden Lane; and (4) that the United States Post Office forward to the Trustee all

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mail addressed to the Debtor. Applicant prepared all legal papers necessary for such application and arranged for publication of the notice required by the Order.

3. *March 17, 1972: Order Fixing Date for Hearing on Trustee's Disinterestedness:*

Applicant applied for and obtained an order from this Court, which fixed May 5, 1972, as the time for the hearing of objections to the retention of the Trustee on the ground that he was not qualified or disinterested as provided in Sections 156 and 158 of the Bankruptcy Act. Applicant prepared all of the legal papers necessary for these applications and appeared before the Hon. Milton Pollack with respect thereto.

4. *Trustee's Reports to the Court.*

Applicant assisted the Trustee in preparing four interim reports dated April 10, 1973, June 8, 1972, October 30, 1972 and January 24, 1973, totaling twelve pages summarizing the status of the proceedings.

5. *May 5, 1972: Hearing on Trustee's Qualification and Disinterestedness:*

Applicant presented the Trustee at a hearing before Hon. Milton Pollack on objections to the Trustee's

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retention in office on the ground that he was not qualified or not disinterested as provided in Sections 156 and 158 of the Bankruptcy Act. The Trustee was found to be qualified and disinterested by the Court.

6. *Order Authorizing Trustee to Pay S.I.P.C. Cash Advances to Customers.*

Applicant applied for and obtained two Orders from the Court, dated July 21, 1972 and December 15, 1972, authorizing the Trustee to make cash payments of advances obtained from S.I.P.C. to customers of the debtor. Applicant further prepared the releases signed by each of the claimants receiving payment from the Trustee and supervised the settlement of the claims.

7. *November 14, 1972: Charisma Securities Corporation and Securities Investor Protection Corp. v. Stephen Lee Adlman.*

Applicant, having reviewed material submitted by the Trustee's accountants relating to the disappearance of Charisma's assets, and having further reviewed the known facts in the financial collapse of Charisma, concluded that a cause of action existed against Stephen Adlman under the Federal Securities Laws for perpetrating a scheme to defraud purchasers of securities. Accordingly, with the concurrence of the Trustee,

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Applicant prepared a summons and complaint against Adlman, together with an affidavit setting forth the evidentiary facts and a proposed order of attachment. These papers, together with an application for permission to commence the suit and proceed by attachment, were submitted to the Court on November 14, 1972.

Upon request of the Court, Applicant further submitted a memorandum of law setting forth the legal theory of the proposed action. This application was subsequently denied on December 14, 1972, without prejudice to renewal at a later time. The Court noted that no inquiry had been made of Adlman about the assets in question. On January 16, 1973, Applicant contacted Adlman concerning his knowledge of Charisma's assets. Adlman stated that in previous conversations with the Securities and Exchange Commission he had invoked the Fifth Amendment and would continue to assert his privilege against self-incrimination if asked any further questions on this subject. An affidavit of this conversation was prepared and submitted to the Court. Once again, the application was denied with the suggestion that Adlman be examined under the Bankruptcy Act.

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However, the United States Attorneys office preferred that we not seek to question Adlman, since the possibility of our conferring immunity from prosecution upon him would impede their ongoing criminal investigation. Adlman was subsequently indicted on March 20, 1973, for criminally receiving stolen property and on or about September 25, 1973, in the Southern District of New York, for conspiracy and securities and mail fraud in connection with the 1971 sale of stock in Automated Information Systems, Inc.

8. *January 19, 1973: Hearing of Objection by
Customers to the Trustee's Determination*

Applicant arranged with the Court for a hearing to be held on objections by customers to the Trustee's determination on January 19, 1973. Prior to December 19, 1973, Applicant notified all customers of the Trustee's determination with respect to their claims and notified them of the hearing date. Prior to the hearing date, Applicant expended considerable time in reviewing claims on which it was expected there would be objections to the Trustee's determination. Applicant interviewed witnesses and arranged for evidence to be available at the hearing. On the hearing date, two

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customers, i.e., Arthur Adams Fischer and M. Jim Karp, appeared to object to the Trustee's determination.

A summary of the problems presented by their claims is set forth on pages 14-16 of this Application.

The Court, having heard testimony of both claimants, and having examined documents submitted by the Trustee, denied the objections of Arthur Adams Fischer and denied all but \$8,500 of the claims of M. Jim Karp.

9. *June 7, 1972: Order Appointing Appraiser and Auctioneer*

Applicant applied for and obtained an Order appointing Bernard Hollander to appraise the property of Charisma, and appointing The Underwriter Salvage Company to sell the appraised property at public auction. However, since the property was being held as security of the landlord of the Charisma premises, and because the appraised value of the property amounted to \$92.50, the Trustee determined to abandon the property.

10. *September 28, 1972: Order of Attachment Served on the Trustee in the action, Shirley Bennet vs. James Karp.*

On September 28, 1972, an Order of Attachment was served on the Trustee, in a New York Supreme Court

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action entitled *Shirley Bennet v. James Karp*, directing Edwin L. Gasperini to report to Kenneth Kellen, Deputy Sheriff, any property or debts held by the Trustee on behalf of James Karp. Applicant prepared a letter to Sheriff Kellen reporting that no debt was presently owed Karp but informing him that Karp had filed a claim for \$18,650.00, which was still being considered by the Trustee.

On or about January 25, 1973, pursuant to the September 28, 1972 attachment, an Order to Show Cause was served on the Trustee by Shirley Bennet, in an action brought in New York Supreme Court, entitled *Shirley Bennet v. Edwin L. Gasperini*, seeking the turnover of \$8,500., the amount awarded to Karp by the Court in the Charisma liquidation on January 17, 1973. At approximately the same time Applicant received a demand by Karen Herzfeld, claiming a prior line on the amount to be awarded to Karp and demanding the turnover of the funds to her. On January 31st, Applicant prepared an affidavit for the Trustee offering to pay the award of \$8,500 into Court, pursuant to Section 6214(d) and Section 6221 of the Civil Practice Law and Rules.

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Thereafter, on February 6, 1973, a claim for \$8,500 was filed by Karen Herzfeld in the action, *Shirley Bennet v. Edwin J. Gasperini*, and on February 26, 1973, a petition for legal fees was filed by N. George Turchin in the action *Shirley Bennet v. James Karp*. On February 26th, Applicant received an affidavit of Jim Karp claiming that neither Shirley Bennet nor Karen Herzfeld had valid causes of action against him. There followed considerable correspondence and negotiations among the various attorneys involved.

On March 7, 1973, an execution with notice to garnishee was served on the Trustee in *Shirley Bennet v. James Karp* as a result of a judgment obtained by plaintiff. Thereafter, Applicant petitioned the New York Supreme Court in *Shirley Bennet v. Edwin L. Gasperini* for consolidation with the action, *Shirley Bennet v. James Karp* in order to avoid a multiplicity of orders and the expense of needless litigation. As a result, the two actions were consolidated and an Order was signed by Judge Gellinoff on May 17, 1973, directing payment of the sum of \$8,500 into Court by the Trustee. Thereafter, Applicant obtained the \$8,500 from S.I.P.C., and on July 13, 1973 paid said sum into court.

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B. *Legal Research*

Because of the lack of precedent under S.I.P.A. it was necessary for Applicant to engage in substantial research regarding a number of aspects of this proceeding, including the following:

1. The applicability to a S.I.P.A. proceeding of provisions of Chapters 10 and Chapters 1 through 7 of the Bankruptcy Act.
2. The tests of disinterestedness of a Trustee in liquidation under S.I.P.A.
3. The necessity of the Trustee filing reports with the Court in a liquidation under S.I.P.A.
4. Whether registered representatives are considered broker-dealers under the S.I.P.A.
5. Whether the trustee of a trust owning stock in the debtor is considered a principal of the debtor under the S.I.P.A.
6. Analysis of the meaning of "customer" as used in S.I.P.A.
7. Analysis of the meaning of "person associated with the debtor" as used in S.I.P.A.
8. The necessity of court approval for selected trustee actions in a liquidation under S.I.P.A.

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9. Analysis of the summary and plenary jurisdiction of bankruptcy courts in a liquidation under S.I.P.A., and analysis of state and federal jurisdiction over plenary suits commenced in a liquidation under S.I.P.A.

10. Analysis of causes of action under sections 10(b) 5, 12 and 17 of the Securities and Exchange Act for theft of customer securities.

11. Analysis of the effect on criminal prosecution of an examination under the Bankruptcy Act.

12. The procedures for giving notice in a liquidation under S.I.P.A.

13. The effect under S.I.P.A. of an injunction, staying suits commenced against the debtor, on an order of attachment, and the commencement of a turnover proceeding against the Trustee of the debtor.

14. The availability of procedures under Article 62 of the CPLR to a Trustee under S.I.P.A.

15. The effect of filing a claim after the two month filing deadline in the Trustee's notice to customers under S.I.P.A.

16. The discharge of debtors' obligations and its effect on general creditors under S.I.P.A.

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17. The duty of a bank to investigate the circumstances surrounding the hypothecation of a company's securities on a personal loan to the company's President.

18. Objection to claims, opposition to objections, and notice of objections in a proceeding under S.I.P.A.

19. Necessity of court approval for Trustee's administrative expenses.

20. Standards for payment of interim and final fees to Trustee and Counsel under S.I.P.A.

C. *Investigation.*

Soon after the appointment of the Trustee, Applicant visited the former offices of the debtor, examined the property located there and took possession of the few papers still available. This material was carefully examined by counsel for information bearing on the location of assets, the reasons for the collapse of Charisma, and the resolution of customer claims.

Upon receiving the accountants' report that certain warrants might be available to Charisma in connection with earlier underwritings, counsel contacted R.&M. Smythe for their opinion on the value of the said warrants. Smythe advised counsel that all of the warrants in question were worthless.

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Applicant interviewed numerous persons formerly connected with the debtor in various capacities including Arthur Adams Fischer, former registered representative of Charisma; Shirley Bennett, a customer of Charisma; Robert Rubin, an officer of Award Winners Inc.,; Sherman Lopat, an officer of the Bank of New York; Robert Bermack, president of Bermack, Klein & Co.; A.H. Gustum, representing the Bank of Nova Scotia; Ludwig E. Schueler, president of Walton Richardson Co., the landlord at Charisma's former offices at 6 Maiden Lane; and Charles Mihalek of the New York regional office of the Securities and Exchange Commission. Sworn statements were also taken from Shirley Bennet, M. Jim Karp, and three former subscribers to the Walton Richardson proposed public issue of stock.

Applicant, in addition, carefully reviewed the extant files of Charisma received from the SEC and the material prepared by the Trustee's accountants tracing the disappearance of assets formerly claimed by Charisma, and reporting on transactions between Charisma and the Bank of New York. This material,

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particularly the accountants' reports, was investigated with the purpose of accounting for the assets of Charisma and, in particular, the following categories of assets:

1. *Cash Assets of Charisma, Including Customer Accounts*

The Charisma records indicate that between \$32,000 and \$42,000 was received by Charisma in connection with the attempted underwriting of three stock issues, I.E. Award Winners, Inc., Walton Richardson & Co., and Gold Star Hat & Cap (the discrepancy in the amount received relates to a claim of \$10,500 by M. Jim Karp rejected by the court, as discussed on page 16).

During the period of time in which these underwritings were being carried out after January, 1971, the same approximate amount was disbursed through the checking account to "Stephen Lee Adlman", "Virginia Adlman", or "Cash". Interviews and the remaining documents and records of Charisma confirm the belief that the monies received by Charisma from customers for these three underwritings were removed by Adlman and used in the running of the business. Indeed, there is some evidence that a portion of these funds may have been

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used to attempt to purchase a life insurance policy with a cash surrender value of approximately \$150,000, which Charisma needed in order to remain in capital ratio. This policy is discussed in more detail below.

2. *Customer and Firm Securities.*

The Charisma stock records indicate that various shares of stock should have been held by the firm in various customer accounts with a total value as of March 9, 1972, of \$2,226. In addition, shares of stock were at one time held by the firm for its own account and were valued, as of March 9, 1972, at \$60,026.

There is no record on the customers' stocks being removed from Charisma; however, no securities belonging to either the customers or Charisma were ever located or recovered by the Trustee. With respect to the firm securities there were notations in existing records that the stocks had been removed, and in one case, that they had been placed in the possession of Stephen Adlman. Nevertheless, no record was found of their disposition.

The probable disposition of the securities is found in examining a personal loan account of Stephen Adlman at the Bank of New York. The account was opened

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by Stephen Adlman on March 18, 1970 with a personal loan of \$22,000.00. The loan was secured by the hypothecation of various securities, most of which were owned by Charisma. Adlman signed the necessary hypothecation agreement and resolution of the board of directors of Charisma, as president. Subsequent to April, 1970, the loan account was reduced by the sale of collateral and the periodic addition of new collateral. Of the collateral sold during this period, Romanoff Industries (formerly Keystone Business Controls) is prominent because a portion of the block sold as collateral is comparable in quantity to the block of Romanoff Industries which was to have been held for the customers of Charisma. This customer's block of Romanoff represents approximately 80% of the value of the customers' stock held by Charisma.

Also prominent in the liquidation of collateral held by the Bank of New York are various other securities in quantities comparable to those formerly held by Charisma in its trading account. Of those securities formerly held by Charisma in its trading account, that do not appear as part of the collateral to the Bank of New York,

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there is direct evidence in the records and in the interviews conducted with Arthur Adams Fischer and others that two blocks of stock were sold in the spring of 1971, and the proceeds were used to pay the debts of Charisma. The remaining firm stocks were without apparent value on March 9, 1972, but there was no indication of their disposition.

The last transaction recorded in the Bank's records was July 6, 1971, approximately eight months before the filing of the petition herein. In view of this delay, there was no opportunity to assert a claim of preference against any person in connection with the disposal of Charisma's securities.

After conducting interviews with Sherman Lopat of the Bank of New York, and examining the Bank's records, it was concluded that the Bank had acted properly in granting the loan and hypothecation and in its subsequent dealings with Charisma and Stephen Adlman.

3. *The Howard "Nick" Johnson Life Insurance Policy*

The only other significant asset claimed by Charisma was a single premium life insurance policy on the life of Howard "Nick" Johnson issued by the

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Alliance Insurance Company of Dothan, Alabama, with a cash surrender of \$157,682.87. The policy was allegedly obtained when investigations were being made by the SEC to determine whether Charisma was in capital ratio. It was first represented to the SEC as an asset in the March 12, 1971 trial balance submitted to the SEC. The SEC, however, subsequently learned from the Alliance Insurance Company that the Company claimed the policy had been obtained by fraud and was void.

Applicant made numerous attempts to locate this policy but was unable to do so. The Alliance Insurance Company is now in reorganization and we have received word that the company possesses only a few disputed assets and has had claims asserted against it amounting to more than \$1,300,000.

The Alabama Commissioner of Insurance informed Applicant that he is seeking to find companies that will take over the policies of Alliance Insurance Company upon payment of premium by the holders. Since it is apparent that no company would take over a single premium prepaid life insurance policy from a bankrupt company, and since we have no evidence that the policy was, in fact, obtained by Charisma or that the policy

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if it was obtained is valid, Applicant recommended to the Trustee that no action be taken in connection with this claimed asset.

OTHER MATTERS

Applicant has frequently had occasion to discuss with the Trustee and the accountants questions relating to the payment of customer claims under the provisions of the S.I.P.A. Wherever possible, Applicant relied on the reports of the Trustee's accountant as to the validity of claims asserted against Charisma. However, in certain cases particularly difficult questions presented themselves which necessitated lengthy discussion with the accountants and the Trustee as to proper disposition. Principal among these claims are the following:

Claims of Arthur Adams Fischer, Lee J. Fischer and Henry Cassorte Smith, as Trustee f/b/o Marie A. Fischer

The above matter was received as three separate claims, one on behalf of Arthur Adams Fischer, one on behalf of Lee J. Fischer and one on behalf of the Marie A. Fischer Trust. The claims on behalf of Arthur Adams Fischer claimed \$19,727 and 10,000 shares of

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United Research Homes, Inc. The Marie A. Fischer Trust claimed \$2,232 in cash and 10,000 shares of United Research Homes. Lee J. Fischer claimed \$1,000 for a personal loan by him to Charisma.

It was subsequently determined by the Court that the claims of Arthur Adams Fischer and the Marie A. Fischer Trust duplicated each other with respect to the 10,000 shares of United Research Homes, and that the \$2,232 of the Marie A. Fischer Trust duplicated in part the claim of \$19,727 by Arthur Adams Fischer. The remaining claim of Arthur Adams Fischer concerned payment by him of money for the satisfaction of debts against Charisma and Mr. Fischer's claims for back salary. It was also determined that the Marie A. Fischer Trust owned 24- $\frac{1}{2}$ % of Charisma Securities Corporation, and that the Trustees of the Trust were Arthur Adams Fischer, Lee J. Fischer and Henry Cassorte Smith.

The three claims were objected to under Section 6(f) 1.A of S.I.P.A. which precludes SIPC from paying the claims of any customer who is a beneficial owner of 5% or more of the securities of the debtor. Objections were also made under Section 6, subsection (1) of S.I.P.A. which provides for SIPC advances only

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to customers and not to persons who loan money to the debtor for the operation of the business. A further objection was made to the duplication of claims by Arthur Adams Fischer and the Marie A. Fischer Trust.

These objections were upheld by the Court in a hearing on January 19, 1973 and the Fischer claims were disallowed insofar as payment from SIPC is concerned. The above claims have, however, been listed with those of the general creditors of Charisma.

M. Jim Karp

Karp filed a claim to recover \$18,650 allegedly given by him to purchase from Charisma certain shares of a new issue, i.e., Award Winners Inc. A portion of Karp's claim involved the issuance of checks amounting to \$8,150 to persons other than Charisma. No proof was submitted that these funds were ever intended for Charisma at all. The remaining \$10,500 of Karp's claim involved five checks allegedly made to Charisma for the purchase of Award Winners. Karp was unable to produce four of the checks because he claimed they had been stolen from his car. He did submit one check, dated April 8, 1971, for \$2,000 and was further

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able to produce confirm slips for the purchase of 17,000 shares of Award Winners for \$8,500. The sum of \$8,500 could be related to certain entries in the Charisma checkbook although there was no other direct confirmation of the money having been received by Charisma. However, Mr. Karp also submitted two notes from Charisma in the amount of \$18,500 as collateral for the money invested.

Mr. Karp's claim was objected to on the ground that a portion of the claim was not supported by him or by the records of Charisma. In addition, information was developed in the course of applicant's investigation, indicating that Mr. Karp might be "a person associated with the debtor" and an undisclosed principal within the meaning of Section 6(f) 1C of the SIPC Act, which if established would preclude payment of SIPC funds to him. Although applicant spent a considerable amount of time investigating Mr. Karp's true relationship to Charisma, the failure of Charisma's principal officer, Stephen Adlman, to cooperate in the investigation made it impossible to obtain a clear picture of Karp's relation to Charisma.

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At a hearing on January 19, 1973, Karp was examined under oath by counsel with respect to his connection with Charisma. At the conclusion of this hearing, the Court awarded Mr. Karp \$8,500.

Shirley Bennett

Shirley Bennett filed a claim for \$7,500 claiming that she had purchased 10,000 shares of Award Winners from Charisma through M. Jim Karp. Mrs. Bennett drew a check payable to M. Jim Karp and he submitted an affidavit that he had paid the money into Charisma on behalf of Mrs. Bennett. Mrs. Bennett's check bore the notation "for 10,000 shares of Award Winners Inc." In addition, Mrs. Bennett received copies of confirm slips for the purchase of 10,000 shares of Award Winners in the amount of \$7,500 and for the sale of these stocks on May 3, 1971 for \$15,000. She also received a Charisma check, on April 30, 1971, payable to her in the amount of \$15,000. This check was later returned for insufficient funds.

Since Award Winners had never been issued, the sale of the shares for \$15,000 was obviously fictitious and could not have taken place. However, because of the Charisma confirm slips and the check for \$15,000 which

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could be traced to the Charisma checkbook, Charisma had apparently acknowledged Mrs. Bennett as a customer. Applicant's investigation uncovered no evidence to show that Mrs. Bennett was in any way connected with Charisma except through the transaction in question. Her story was supported by an affidavit by Karp. Accordingly, after an investigation of all the circumstances, it was determined to refund the \$7,500 invested by her in Award Winners Inc.

Sam Karp

Sam Karp, a brother of M. Jim Karp, submitted a claim for \$2,500 for subscription to shares of Award Winners Inc. Sam Karp, by telephone, promised to submit supporting documents for his claim, including his cancelled check. However, since these supporting documents were never submitted to counsel and since Sam Karp refused to return Applicant's subsequent telephone calls, his claim was objected to and ultimately disallowed.

Sanford Seigel

On October 17, 1972, considerably after the deadline for receiving customer claims, Applicant received

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a call from Sanford Siegel concerning a claim of \$1,000 which he wished to make against Charisma, Siegel claimed that he had received no notice of the appointment of the Trustee, although he claims to have been informed by persons investigating the collapse of Charisma that he would be notified as soon as a Trustee was appointed. On the positive side, Siegel had cooperated with the Securities & Exchange Commission investigation into the Charisma collapse and there was support in the Charisma records for his claim of \$1,000. Accordingly, his claim was allowed although it was submitted late.

Walton Richardson Co.

In late 1970, Charisma undertook an underwriting for Walton Richardson and received certain sums of money from its customers for the proposed new issue. Because the issue did not reach the minimum subscription, however, it never materialized. Nevertheless, Charisma never refunded the money received therefor to the subscribers. Walton Richardson eventually felt it necessary to purchase the claims from the individual subscribers and assert those claims against

APPLICATION BY TRUSTEE'S COUNSEL FOR A FINAL ALLOWANCE
OF COMPENSATION FOR SERVICES RENDERED

Charisma. Each individual subscriber claim by Walton Richardson was checked and verified by the Trustee's accountants. Counsel determined that Walton Richardson could properly purchase and assert claims of its subscribers, under S.I.P.A.

HOURS REQUIRED

The number of hours necessarily devoted to this liquidation during the period February 1, 1972 through September 30, 1973 is as follows:

| | |
|--|-----------------|
| Mr. McGinley | 131 hours |
| Associate Attorneys of Gasperini, Koch & Savage (Messrs. Downs and Zwerling) | 359 hours |
| Research Assistants | <u>60</u> hours |
| TOTAL HOURS EXPENDED BY COUNSEL | 550 hours |

March 9, 1972 was the actual date of the appointment as counsel by the Court; however, necessary preliminary work commenced on February 1, 1972. Total hours expended by counsel from February 1, 1972 to March 9, 1972 amounted to 12 hours.

For the period October 1, 1973, through the completion of these proceedings, it is anticipated that there will be a further number of hours necessary

APPLICATION BY TRUSTEE'S COUNSEL FOR A FINAL ALLOWANCE
OF COMPENSATION FOR SERVICES RENDERED

to complete the liquidation. The hours so anticipated are as follows: Mr. McGinley (10 hours); Associate Attorneys of Gasperini, Koch & Savage (30 hours); Research assistants (10 hours).

Total Additional Estimated Hours 50 hours

Total Hours 600 hours

My associates and I have maintained daily diary entries of the time spent on this matter and they are available to the Court for inspection.

It is respectfully requested that my firm's allowance be computed on a time basis of not less than \$90 per hour for my time, at not less than \$45 per hour for that of my associates, and not less than \$10 per hour for that of my research assistants. For the entire liquidation this would amount to not less than \$12,690 for my time, \$17,505 for the time of the associate attorneys at my firm, and \$700 for the time of the research assistants, or a total amount of not less than \$30,895, which is a fair and reasonable figure in light of the criteria set forth in an earlier opinion of the Court in this proceeding concerning fees allowable to a Trustee and his counsel in a SIPC

APPLICATION BY TRUSTEE'S COUNSEL FOR A FINAL ALLOWANCE
OF COMPENSATION FOR SERVICES RENDERED

proceeding. This total includes actual time expended through September 30, 1973, and time estimated to conclude this liquidation;

As indicated in that opinion, a SIPC proceeding is not in the nature of a contingency action, and payment of fees to a Trustee and his counsel are not based upon the size of the estate or the amount of assets recovered; rather the nature, novelty and difficulty of the questions presented and the overall relationship of the services to the estate is the applicable criteria.

It is submitted that the proceedings involved here were by their nature complex and required familiarity with a new legislation, untested by court decision, as well as with the intricacies of the brokerage industry. In addition, in this case, there were the added difficulties of incomplete and missing records, a lengthy delay of almost a year after the debtor had ceased to do business in appointing a trustee, and the refusal to cooperate with our investigation by the principal officer of Charisma.

Notwithstanding these difficulties, prompt action was taken by counsel to investigate the circumstances surrounding the collapse, customers' funds were returned

APPLICATION BY TRUSTEE'S COUNSEL FOR A FINAL ALLOWANCE
OF COMPENSATION FOR SERVICES RENDERED

to them in a very short period of time and the liquidation was efficiently concluded. The details of our investigation were immediately made known to SIPC, to assist in future liquidations, and to aid in recommending more effective means of safeguarding the brokerage industry. The work performed required a high degree of legal expertise in investigating facts and evaluating their legal significance as indicated in the description of services in this application.

WHEREFORE, applicant prays that it be granted a final allowance of compensation in the sum of not less than \$30,895 for services rendered to the Trustee in this proceeding, no allowance having heretofore been made.

GASPERINI, KOCH & SAVAGE,

By Patrick W. McGinley,
A Member of the Firm.

(Sworn to by Patrick W. McGinley November 2, 1973).

TRUSTEE'S APPLICATION TO AMEND FINAL REPORT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

State of New York,
County of New York, ss:

EDWIN L. GASPERINI, being duly sworn, deposes
and says:

I am Trustee of Charisma Securities Corporation
("Charisma") appointed on March 9, 1972 by order of
the Hon. Milton Pollack, United States District Court
for the Southern District of New York. I submit this
affidavit as an application to amend my Final Report
and Accounting to include two final items of expenditure -
a service charge by the Bank of \$1.00 and an additional
check of \$74.00 for secretarial services.

On or about November 2, 1972, I submitted to the
Court my Final Report and Accounting. On page 4 of
Schedule 4 of this Final Report and Accounting, I
summarized the balance of the two accounts maintained
by me in connection with my duties of Trustee, as
indicated below. Two additional items of expenditure

TRUSTEE'S APPLICATION TO AMEND FINAL REPORT

have been incurred and should be included in the summary - a service charge to the Bank of \$1.00 in the Customer Account and a check to Rosemarie Hardy in the amount of \$74.00 in the Administrative Account for secretarial services in preparing the final papers in this matter. The Final Accounting, therefore, should read as follows:

| | |
|------------------------------|--------------|
| A. Marine Midland Bank | |
| Account 210-0108-006-81657-6 | |
| Customer Account | |
| Balance per Trustee's Report | \$1,366.45 |
| Less: Service Charge to Bank | <u>1.00</u> |
| Final Balance | \$1,365.46 |
| B. Marine Midland Bank | |
| Account 210-0108-006-81658-4 | |
| Administrative Account | |
| Balance per Trustee's Report | 123.21 |
| Less: Check No. 148 to | |
| Rosemarie Hardy | <u>74.00</u> |
| Final Balance | \$ 49.21 |

Annexed hereto as Exhibit A and B respectively are all checks and statements of account received from the Marine Midland Bank in connection with the above two accounts including check no. 148. I hereby certify that all checks issued by me as Trustee have been cashed by the Bank on which they were drawn and are included in the two Exhibits annexed hereto.

TRUSTEE'S APPLICATION TO AMEND FINAL REPORT

WHEREFORE, I pray that the Court allow my Final Report and Accounting to be amended as set forth herein and that my Final Report and Accounting, as amended, be approved by the Court.

(Sworn to by Edwin L. Gasperini, Dec. 5, 1973.)

TRUSTEES COUNSEL'S APPLICATION TO MODIFY FEE REQUEST.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

State of New York,
County of New York, ss:

PATRICK W. MC GINLEY, being duly sworn, deposes
and says:

I am a member of the firm of Gasperini, Koch &
Savage, attorneys for the Trustee of Charisma Securities
Corporation, Edwin L. Gasperini. The firm of Gasperini,
Koch & Savage was appointed Counsel to the Trustee by
Order of Hon. Milton Pollack, United States District
Court, Southern District of New York, on March 9, 1972.
I have been the partner in charge of the case during
the entire course of this liquidation. I submit this
affidavit as an application to modify the request for
compensation to reduce it from \$30,895 to \$25,000.

On or about November 2, 1973, the firm of Gasperini,
Koch & Savage submitted an Application for Final
Allowance of Compensation for Services as Counsel to

TRUSTEES COUNSEL'S APPLICATION TO MODIFY FEE REQUEST

the Trustee, requesting compensation in the amount of \$30,895. (A copy of the Application is annexed hereto as Exhibit A.)

This request was based among other things on the amount of time necessarily spent in the discharge of our duties -- 600 hours, the novelty and difficulty of the issues involved and the amount of legal skill required. As indicated in Counsel's Application for Final Allowance of Compensation the liquidation presented difficult and novel questions because the Company had been effectively out of business for 10 months prior to the appointment of a trustee, the records were incomplete or stolen, allegations of fraud and criminal conduct surrounded the Company's prior activities and no principal or former employee was available to assist the Trustee in deciphering the submitted claims. Out of \$92,280.37 in customer claims received only \$42,206.62 were paid and each of the 37 claims had to be carefully reviewed in light of the circumstances surrounding the case.

Compensation paid to Trustees and his counsel under the Securities Investor Protection Act of 1970 need not be bound by the rigid economies of a bankruptcy proceeding; but I am also aware that compensation

TRUSTEES COUNSEL'S APPLICATION TO MODIFY FEE REQUEST

payable to a Trustee and his counsel should take into consideration among other factors the size of the estate involved.

Upon consideration of the size of the estate in Charisma, and after discussing the amount of counsel's compensation with the Securities Investor Protection Corporation, the firm of Gasperini, Koch & Savage is persuaded that it would be appropriate to petition the Court to fix its compensation at \$25,000 rather than \$30,895.

WHEREFORE, Gasperini, Koch & Savage prays that a final allowance of compensation in the sum of not less than \$25,000 for services rendered to the Trustee in this proceeding, no allowance having heretofore been made.

(Sworn to by Patrick W. McGinley, December, 1973).

AFFIDAVIT OF PATRICK W. MC GINLEY PURSUANT TO SECTION
62d OF THE BANKRUPTCY ACT AND RULES 16 AND X-19
OF THE BANKRUPTCY RULES FOR THE SOUTHERN DISTRICT
OF NEW YORK.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

State of New York,
County of New York, ss:

PATRICK W. MCGINLEY, being duly sworn, deposes and
says:

1. I am an attorney at law and a member of the law
firm of Gasperini, Koch & Savage, who were appointed
attorneys for the Trustee on March 9, 1972 for the
liquidation of the business of Charisma Securities
Corporation ("Debtor") in this proceeding under the
Securities Investor Protection Act of 1970.

2. The firm of Gasperini, Koch & Savage is seeking
reasonable compensation for services rendered and
reimbursement for actual and necessary costs and
expenses incurred in this proceeding as counsel for the
Trustee.

AFFIDAVIT OF PATRICK W. MC GINLEY PURSUANT TO SECTION
62d OF THE BANKRUPTCY ACT AND RULES 16 AND X-19
OF THE BANKRUPTCY RULES FOR THE SOUTHERN DISTRICT
OF NEW YORK

3. The firm has not entered into any agreement, written or oral, express or implied, with the Debtor, or any other party in interest, or any attorney of any such persons, for the purpose of fixing the amount of any of the fees or other compensation to be allowed out of or paid or to be paid, for services rendered in or to be rendered in connection with this proceeding.

4. No arrangement or understanding exists between the firm and any other person with respect to a division of the compensation which may be allowed except that I respectfully note on behalf of the firm that there is an arrangement or partnership agreement among the members of Gasperini, Koch & Savage providing for a division of all professional income earned by said law firm or by any member thereof. Hence, the members of the firm of Gasperini, Koch & Savage will share in the compensation which may be allowed to Gasperini, Koch & Savage in this proceeding, all in accordance with said partnership arrangement.

AFFIDAVIT OF PATRICK W. MC GINLEY PURSUANT TO SECTION
62d OF THE BANKRUPTCY ACT AND RULES 16 AND X-19
OF THE BANKRUPTCY RULES FOR THE SOUTHERN DISTRICT
OF NEW YORK

5. Gasperini, Koch & Savage were appointed attorneys for the Trustee by order of this Court dated March 9, 1972. The Application by the Securities Investor Protection Corporation for the foregoing order indicated that it was the intention of Gasperini, Koch & Savage and the Trustee to share the compensation received by each of them in this proceeding.

6. No agreement prohibited by Title 18 U.S.C. Sec. 155 has been made by me.

(Sworn to by Patrick W. McGinley, December, 1973.)

STATEMENT UNDER OATH PURSUANT TO SECTION 249 OF THE
BANKRUPTCY ACT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

PATRICK W. MC GINLEY, a partner of the firm of
Gasperini, Koch & Savage seeking compensation for
services rendered in this proceeding makes the
following statement pursuant to Section 249 of the
Bankruptcy Act.

Subsequent to the commencement of the instant
proceeding, no beneficial interest, direct or indirect,
in any claims against, or participation, in, the debtor
was acquired or transferred by the undersigned or for
his account, or by the firm of Gasperini, Koch & Savage
or for its account.

s/ Patrick W. McGinley.

(Verified by Patrick W. McGinley).

TRUSTEE'S APPLICATION TO MODIFY FEE REQUEST.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

State of New York,
County of New York, ss:

EDWIN L. GASPERINI, being duly sworn, says:

I am the Trustee of Charisma Securities Corporation ("Charisma") appointed on March 9, 1972 by order of the Honorable Milton Pollack, United States District Court for the Southern District of New York. I submit this Application to modify my request for compensation to reduce it from \$7,500 to \$5,000.

On or about November 2, 1972, I submitted to the Court my Final Report and Accounting, and my Application for a Final Allowance of Compensation for services rendered as Trustee (a copy of the Application is annexed hereto as Exhibit A). In my Application for a Final Allowance of Compensation, I requested a fee of \$7,500 for my services as Trustee. This request was based, among other things, on the fact that I had

TRUSTEE'S APPLICATION TO MODIFY FEE REQUEST

devoted 75 hours to my activities as Trustee and on my belief that a rate of compensation for my services of not less than \$100 per hour would be fair and reasonable (Application, Par. 5.A.1).

Contemporaneously, I submitted a copy of the annexed Exhibit A to the Securities Investor Protection Corporation ("SIPC") for their review. After consultation with SIPC, I have decided to reduce the amount initially requested of not less than \$7,500, to \$5,000, under all of the circumstances of this liquidation. I have been advised by SIPC that upon approval by this Court, SIPC will advance the amount of \$5,000 for my services as Trustee.

WHEREFORE, I pray that approval be granted by this Court of payment to me of \$5,000 for my services rendered as Trustee in this proceeding, no allowance having been heretofore been made to me.

(Sworn to by Edwin L. Gasperini, December 1973).

AFFIDAVIT OF EDWIN L. GASPERINI PURSUANT TO SECTION
62d OF THE BANKRUPTCY ACT AND RULES 16 AND X-19
OF THE BANKRUPTCY RULES FOR THE SOUTHERN DISTRICT
OF NEW YORK.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

State of New York,
County of New York, ss.:

EDWIN L. GASPERINI, being duly sworn, deposes
and says:

1. On March 9, 1972, I was appointed Trustee
("Trustee") for the liquidation of the business of
Charisma Securities Corporation ("Debtor") pursuant
to the Securities Investor Protection Act of 1970,
and am presently acting in that capacity. I am an
attorney at law and a member of the firm of Gasperini,
Koch & Savage, appointed counsel to the Trustee in
this proceeding.

2. I am seeking reasonable compensation for
services rendered as Trustee and for reimbursement for
actual and necessary costs and expenses incurred while
acting as Trustee.

AFFIDAVIT OF EDWIN L. GASPERINI PURSUANT TO SECTION
62d OF THE BANKRUPTCY ACT AND RULES 16 AND X-19
OF THE BANKRUPTCY RULES FOR THE SOUTHERN DISTRICT
OF NEW YORK

3. I have not entered into any agreement, written or oral express or implied with the Debtor, or any other party in interest, or any attorney of any such persons, or my attorneys, for the purpose of fixing the amount of any of the fees or other compensation to be allowed out of or paid from the assets of the Debtor.

4. No arrangement or understanding exists between me and any other person with respect to a division of the compensation which may be allowed to me, except for an arrangement among the members of Gasperini, Koch & Savage providing for a division of all professional income earned by said law firm or by any member thereof. As a member of the law firm of Gasperini, Koch & Savage, I will share in the compensation which may be allowed to Gasperini, Koch & Savage in this proceeding and the members of Gasperini, Koch & Savage will share in any compensation which may be allowed me in this proceeding, all in accordance with said partnership arrangement.

5. I was appointed Trustee, and the firm of Gasperini, Koch & Savage were appointed my attorneys, by order of this Court dated March 9, 1972. The

AFFIDAVIT OF EDWIN L. GASPERINI PURSUANT TO SECTION
62d OF THE BANKRUPTCY ACT AND RULES 16 AND X-19
OF THE BANKRUPTCY RULES FOR THE SOUTHERN DISTRICT
OF NEW YORK

Application by the Securities Investor Protection
Corporation for the foregoing order indicated that it
was the intention of Gasperini, Koch & Savage and
me to share the compensation received by each of us
in this proceeding.

6. No agreement prohibited by Title 18 U.S.C.
Sec. 155 has been made by me.

(Sworn to by Edwin L. Gasperini, Trustee, Dec. 1973.)

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STATEMENT UNDER OATH PURSUANT TO SECTION 249 OF THE
BANKRUPTCY ACT.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

EDWIN L. GASPERINI, a person seeking compensation for services rendered in this proceeding makes the following statement pursuant to Section 249 of the Bankruptcy Act.

Subsequent to the commencement of the instant proceeding, no beneficial interest, direct or indirect, in any claims against, or participation in, the debtor was acquired or transferred by the undersigned or for his account.

s/ Edwin L. Gasperini

(Verified by Edwin L. Gasperini.)

AFFIDAVIT OF THEODORE H. FOCHT IN SUPPORT OF
APPLICATION OF TRUSTEE AND COUNSEL.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

- - - - -
SAME TITLE
- - - - -

District of Columbia, ss:

THEODORE H. FOCHT, being duly sworn, deposes
and says:

1. Deponent is the General Counsel of the
Securities Investor Protection Corporation ("SIPC"),
and is familiar with the prior proceedings herein.
This affidavit is submitted in support of:

(a) The Trustee's "Final Report and Account"
wherein the trustee(i) accounts to the Court for his
activities in the course of this proceeding, and (ii)
requests certain relief for the purpose of concluding
this proceeding, including his own discharge as well
as that of his surety;

(b) The trustee's application whereby he seeks
an allowance of compensation for services rendered
in the aggregate sum of \$7,500, subject to reduction

AFFIDAVIT OF THEODORE H. FOCHT IN SUPPORT OF
APPLICATION OF TRUSTEE AND COUNSEL

as hereinafter stated; and

(c) The application of the trustee's counsel whereby he seeks an allowance of compensation for services rendered in the aggregate sum of \$30,895.

For the reasons hereinafter stated SIPC fully supports the applications of the trustee and his counsel in all respects.

2. Deponent and other members of the staff of SIPC have reviewed the applications now before the Court, and in addition have reviewed the time records maintained by the trustee and his counsel with respect to the services rendered by them. As a result of that review SIPC communicated with counsel for the trustee for the purpose of discussing the criteria applicable to proceedings under the 1970 Act by reason of decisions rendered thereunder. Applying those criteria, the trustee and his counsel concluded that it would be appropriate to adjust their respective requests for compensation -- in the case of the trustee to the sum of \$5,000, and in the case of his counsel to the sum of \$25,000. That adjustment results in a decrease of

AFFIDAVIT OF THEODORE H. FOCHT IN SUPPORT OF
APPLICATION OF TRUSTEE AND COUNSEL

\$8,395 from the aggregate sum requested by them in their original application -- representing an aggregate reduction of approximately 22 percent. The willingness of the trustee and his counsel to accept fees in an amount less than the expenditure of time alone would warrant, which expenditure of time SIPC does not challenge, represents a proper accommodation to the applicable criteria governing compensation in cases of this type.

3. By reason of the foregoing SIPC supports in full the respective applications of the trustee and his counsel, including their request for compensation in the reduced amounts.

WHEREFORE, SIPC respectfully submits that the trustee's final report and account be approved, and that the applications of the trustee and his counsel, as amended with respect to fees, be in all respects granted.

(Sworn to by Theodore H. Focht, General Counsel Securities Investor Protection Corporation, December 6, 1973).

LETTER DATED JANUARY 17, 1974 FROM THEODORE H. FOCHT
TO JUDGE POLLACK.

STPC
SECURITIES INVESTOR PROTECTION CORPORATION
900 SEVENTEENTH STREET, N.W. • SUITE 800
WASHINGTON, D.C. 20006 • (202) 223-8400

January 17, 1974.

The Honorable Milton Pollack
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

RECEIVED

MAR 01 1974

GASPERINI & SARGENT

Re: Charisma Securities Corporation

Dear Judge Pollack:

This is in reference to our telephone conversation of December 14, 1973, during which you asked me to set forth in a letter what services were required of the trustee and his counsel in the above-referenced liquidation. I apologize for the delay in this response, but, as explained in Mr. Caron's letter to you of January 2, the delay has been caused by my unexpected absence from the office due to illness. What services were actually performed have been detailed in the trustee's final report and in the applications of the trustee and counsel for allowances. This letter is intended as a summary of those services essential to the liquidation of Charisma.

Of course, the initial aspects of the liquidation concerned the marshaling and the preservation of the assets of the debtor, necessarily including taking possession of the books and records of the debtor (some of which were in the possession of the SEC, which had been investigating Charisma for some time) and collecting certain assets in local banks. The trustee, of course, had to undertake such steps as publishing the notice of his appointment to the customers and creditors of the debtor; retaining a certified public accounting firm to review the customer accounts with a view to a speedy resolution of customer claims; and obtaining a court order directing all banks holding funds in the name of Charisma to pay over such sums. Mr. Gasperini had extensive discussions with officials of the SEC, the NASD, and the New York State Attorney General's office concerning their investigations of Charisma with a view to discovery of assets and causes of action which might be pursued by the trustee.

LETTER DATED JANUARY 17, 1974 FROM THEODORE H. FOCHT
TO JUDGE POLLACK

The Honorable Milton Pollack

- Page Two -

January 17, 1974.

An important phase of the liquidation concerned itself with the satisfaction of customer claims. It was necessary to review the reports of the accountants on these matters and to resolve unclear items. Thirty-seven claims totaling \$134,486.99 were submitted; and of this number, twenty-four were allowed in whole or in part totaling \$42,206.62, and thirteen were disallowed totaling \$92,280.37. Because of the unique nature of several of these claims and because of records which were seriously incomplete, it was necessary for the trustee and his counsel to consult at length with the accountants. Nonetheless, it is important to note that eighty percent of the claims were resolved within one and a half months and the remaining claims were settled within six months after the deadline for filing. There were unusual and complicated issues concerning some of the claims, and discussions between the trustee, counsel, and the accountants as to the proper disposition of these particularly difficult matters were lengthy.

There were, of course, the usual judicial proceedings attendant to the liquidation. It was necessary for the trustee and his counsel to be present at the initial hearing for the order adjudicating that the customers of Charisma were in need of protection and appointing the trustee. Similarly, counsel prepared the order fixing the date for the disinterestedness hearing; and, of course, both the trustee and counsel attended the hearing. The trustee directed counsel in the preparation for the hearing of customers' objections to the trustee's determination of their claims. The legal research required of counsel on these matters was substantial. In addition, four interim reports were submitted to the court, and it was essential that counsel assist the trustee in their preparation. Counsel further prepared numerous orders to effectuate the payment of customer claims. And, of course, there was the final meeting of creditors.

I think what was significant in this proceeding is not the size of the estate nor the customer involvement, at least in terms of numbers and exposure to the SIPC fund, but the challenge the estate presented in the sense of carrying out the purposes of the SIPA legislation. In the Charisma liquidation the opportunities for fraud and misappropriation of customer and firm securities were apparent. Charisma had been out of business for nearly ten months prior to the time Mr. Gasperini was appointed. He was asked to undertake the liquidation in part because of his extensive experience in litigation and investigatory work. The disappearance of records, the incomplete books, and the atmosphere of fraud which pervaded this estate called for particularly cautious and diligent investigation especially in light of the existence of the SIPC fund and in furtherance of

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LETTER DATED JANUARY 17, 1974 FROM THEODORE H. FOCHT
TO JUDGE POLLACK

The Honorable Milton Pollack

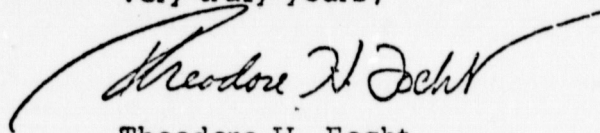
- Page Three -

January 17, 1974.

SIPC's responsibilities to its fund, the securities industry, the investing public, and, ultimately, the Congress. The investigations undertaken by the trustee and counsel were undertaken in furtherance of the statutory scheme and highlighted the facts surrounding the demise of the firm. These investigations were, in my opinion, part of the proper duties and responsibilities of the trustee and counsel.

In short, then, after a review of the entire matter, including an analysis of the time records, I believe that all of the work undertaken by the trustee and counsel was necessarily required by the unusual nature of this liquidation and the requirements of the SIPA legislation, and again support the fee applications and respectfully ask that they be allowed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Theodore H. Focht", with a long, sweeping horizontal line extending to the right.

Theodore H. Focht
General Counsel